

United States
Circuit Court of Appeals
For the Ninth Circuit. 8

The British Steamship "COOLGARDIE," Libellee,
and H. A. THOMSON, Master and Claimant,
Appellants,

vs.

WILLIAM F. JAMES,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the District and Territory of Hawaii.

FILED
FEB 23 1919
F. D. MORTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States in and
for the District and Territory of Hawaii.*

ADMIRALTY—No. 170.

WILLIAM F. JAMES,

Libellant,

vs.

The British Steamship "COOLGARDIE," etc.,

Libellee.

Transcript of Record on Appeal.

Names and Addresses of Attorneys.

For Libellant, William F. James:

Messrs. THOMPSON & CATHCART, Honolulu, Hawaii.

For Libellee and Claimant:

Messrs. ROBERTSON and OLSON, Honolulu, Hawaii. [1*]

Clerk's Statement Under Admiralty Rule 4.**TIME OF COMMENCING SUIT.**

February 14, 1918: Verified libel was filed and monition issued to the United States marshal for the District of Hawaii.

NAMES OF ORIGINAL PARTIES.

Libellant: William F. James.

Libellee: The British Steamship "Coolgardie," whereof H. A. Thomson is and was lately master and captain, her tackle, apparel, furniture, boats and appurtenances, and against all persons having or claiming to have any interest therein and against all persons lawfully intervening in their interests therein.

DATES OF FILING OF PLEADINGS.

Libel: February 14, 1918.

Appearance and Claim: February 15, 1918.

Claimant's Answer: February 23, 1918.

ATTACHMENT OF PROPERTY AND PROCEEDINGS.

February 14, 1918: Monition was issued and deliv-

*Page-number appearing at foot of page of original certified Apostles on Appeal.

ered to the United States Marshal for the District of Hawaii. Said monition was thereafter returned into court with the following return by the said marshal:

“In obedience to the within Monition, I attached the British S. S. ‘Coolgardie’ therein described, on the 14th day of February, A. D. 1918, and have given due notice to all persons claiming the same that this Court will, on the 23d day of February, A. D. 1918 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. J. J. Smiddy, United States Marshal. By L. K. Silva, Deputy. Honolulu, February 14th, 1918. [2]

February 15, 1918: Claim filed by H. A. Thomson, master and claimant of the British steamship “Coolgardie,” her tackle, etc., together with stipulation for the release of the said steamship “Coolgardie,” etc. Notice of the filing of said stipulation and release was given to said marshal by the clerk of said court.

TIME WHEN TRIAL WAS HAD.

The above-entitled cause came on regularly for trial in the United States District Court for the Territory of Hawaii, before the Honorable J. B. POINDEXTER and the Honorable HORACE W. VAUGHAN, Judges of said Court on the following days, to wit: March 8, 1918, March 11, 1918, March 12, 1918, August 27, 1918 and August 28, 1918.

At the trial of said cause the following witnesses

were examined *viva voce* and gave their evidence in open court before the said Judges of said court.

Witnesses called on behalf of libellant: William F. James and A. N. Sinclair.

Witnesses called on behalf of the libellee and claimant: G. Provo, Kristian Hansen, John Sinclair, Clifford Black, Charles Patterson, Bernard Krumin, Conrad Olson, H. A. Thomson and John Macauley.

October 9, 1918: Decision in cause, VAUGHAN, Judge.

November 1, 1918: Decree filed and entered.

November 9, 1918: Notice of appeal.

November 15, 1918: Assignment of errors. [3]

Clerk's Certificate to Statement Under Admiralty Rule 4.

United States of *California*,

District of Hawaii,—ss.

I, A. E. Harris, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of the commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; an account of the proceedings showing the attachment of the said vessel and her release under stipulation for said release; the time when the trial was had and the names of the Judges hearing the same; the date of entry of the final decree and the date when the notice of appeal

was filed and when the assignment of errors was filed in the case of William F. James, Libellant, vs. The British Steamship "Coolgardie," etc., Admiralty Number 170.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 18th day of January, A. D. 1919.

[Seal] A. E. HARRIS,
Clerk U. S. District Court, Territory of Hawaii.

[4]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship "Coolgardie," Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee, and H. A. Thomson, Master and Claimant. Order of Enlargement of Time for Filing Apostles on Appeal. Filed Nov. 26, 1918, at 11 o'clock and 30 minutes A. M. A. E. Harris, Clerk. —————, Deputy Clerk. [5]

*In the District Court of the United States, in and
for the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

WILLIAM F. JAMES,

Libellant,

vs.

The British Steamship "COOLGARDIE," Where-
of H. A. THOMSON is and was Lately Mas-
ter and Captain, Her Tackle, Apparel, Fur-
niture, Boats and Appurtenances, and Against
All Persons Having or Claiming to Have Any
Interest Therein and Against All Persons
Lawfully Intervening in Their Interests
Therein,

Libellee,

and

H. A. THOMSON,

Master and Claimant.

**Order Enlarging Time to and Including January 2,
1919, to File Record and Docket Cause.**

Good cause appearing therefor, IT IS HEREBY
ORDERED that the British steamship "Coolgar-
die," libellee, and H. A. Thomson, master and claim-
ant in the above-entitled cause, may have to and in-
cluding the 2d day of January, 1919, within which
to procure to be filed in the United States Circuit
Court of Appeals for the Ninth Circuit, the apostles
on appeal to said United States Circuit Court of Ap-
peals from the final decree heretofore made and en-

tered in said cause in the District Court of the United States in and for the District and Territory of Hawaii, certified by the clerk of said District Court.

Dated, Honolulu, T. H., November 26, 1918.

HORACE W. VAUGHAN,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

[6]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship “Coolgardie,” Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee, and H. A. Thomson, Master and Claimant. Order of Enlargement of Time for Filing Apostles on Appeal. Filed Jany. 2, 1919, at — o’clock and — minutes — M. A. E. Harris, Clerk. ———, Deputy Clerk. [7]

[Title of Court and Cause.]

Order Enlarging Time to and Including February 2, 1919, to File Record and Docket Cause.

Good cause appearing therefor, IT IS HEREBY ORDERED that the British steamship “Coolgardie,” libellee, and H. A. Thomson, master and claimant in the above-entitled cause, may have to and in-

cluding the 3d day of February, 1919, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the apostles on appeal to said United States Circuit Court of Appeals from the final decree heretofore made and entered in said cause in the District Court of the United States in and for the District and Territory of Hawaii, certified by the Clerk of said District Court.

Dated, Honolulu, T. H., January 2d, 1919.

HORACE W. VAUGHAN,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

[8]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship "Coolgardie," Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee, and H. A. Thomson, Master and Claimant. Order for Withdrawal and Forwarding of Original Exhibits. Filed Nov. 18, 1918, at 12 o'clock and 20 Minutes P. M. (Sgd.) A. E. Harris, Clerk. [9]

[Title of Court and Cause.]

**Order Directing Forwarding of Exhibits to
Appellate Court.**

WHEREAS in the opinion of the undersigned Judge of the above-entitled District Court of the United States, the original exhibits introduced in evidence in the above-entitled cause and hereinafter specified should be inspected in the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal taken in said cause to said United States Circuit Court of Appeals,—

IT IS HEREBY ORDERED that the clerk of this Court do withdraw from the files of this court and with and as a part of the record on said appeal, forward to the clerk of said United States Circuit Court of Appeals, the following exhibits introduced in evidence in said cause, viz.: [10]

Libellee's Exhibit 1.

Libellant's Exhibit "A."

Claimant's Exhibit 2.

Claimant's Exhibit 3.

Claimant's Exhibit 4.

Libellant's Exhibit "B."

Dated November 19, 1918.

(Sgd.) HORACE W. VAUGHAN,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

[11]

In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty—In Rem. No. 170. William F. James, Libellant, vs. The British Steamship "Coolgardie," Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances and Against all Persons Having or Claiming to Have any Interest Therein and Against all Persons Lawfully Intervening in Their Interests Therein. Libel in Rem. Filed Feby. 14, 1918, at 10 o'clock and 20 minutes A. M. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Thompson & Cathcart, Proctors for Libellant. [12]

In the District Court of the United States in and for the District and Territory of Hawaii.

IN ADMIRALTY—IN REM.

WILLIAM F. JAMES,

Libellant,

vs.

The British Steamship "COOLGARDIE," Whereof, H. A. THOMSON is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances and Against All Persons Having or Claiming to have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein.

Libelee.

Libel in Rem.

To the Honorable J. B. POINDEXTER, Judge of the District Court of the United States, in and for the District and Territory of Hawaii.

The libel of William F. James, of said Territory and District of Hawaii, and Acting Assistant Surgeon, United States Public Health Service, against the British steamship "Coolgardie," whereof H. A. Thomson is and was captain and master, against her tackle, apparel, furniture, boats and appurtenances, and the freight due for her cargo, and against the freight now or lately laden therein, and against all persons lawfully intervening in their interests therein, in a cause of damages, civil and maritime, alleges as follows:

I.

This libellant shows that he is fifty-seven years of age and a married man; that he is a graduate physician and surgeon and has been in the active practice of his profession prior to the [13] accident hereinafter set forth, since the year 1888; that he has been an Acting Assistant Surgeon in the United States Public Health Service on duty in the Port of Honolulu, Territory of Hawaii, since the month of November, A. D. 1903; that his duty as such Acting Assistant Surgeon required him to board vessels desiring to enter the said port of Honolulu and examine their passengers and crew and ascertain if there are any diseases there among that would prevent said vessel from entering said port; that in order to properly and absolutely perform his duty it was and is

necessary to board said vessels from a launch while said vessels are at sea outside of said port; that in order to perform his duties it requires great physical exertion, agility and activity as well as mental activities all of which libellant has had to an unusual degree prior to the accident hereinafter set forth; that libellant received as his salary from said position the sum of \$200 per month.

II.

That on or about the 12th day of August, A. D. 1917, the said libellant in the usual course and performance of his duty as said Acting Assistant Surgeon United States Public Health Service was required to board the said British steamship "Coolgardie" to examine the crew thereof, which said steamship was lying off the Port of Honolulu and desired and requested entrance into said Port, but could not so enter without having the health of its crew first examined and passed upon; that the libellant was the officer detailed by the Public Health Service to make such examination; that the said libellant proceeded to said steamship in a launch; that the captain and master of said steamship had a Jacob's ladder let down and said ladder provided the sole means for boarding said steamship and; that it was the duty of the owners of said [14] steamship and of their agent and person in charge, the said captain and master, to provide a safe and reasonable means for said libellant to board said vessel; and libellant had a right to rely upon them so doing; that said libellant climbed up said Jacob's ladder but upon reaching the rail of said steamship found that he could only get upon the deck thereof by stepping

upon a pile of loose and unsecured boards covered by an unfastened and unsecured door mat; relying upon the judgment of the captain and master in providing such means for boarding said vessel and thinking that the master and captain had provided a safe means, libellant stepped upon the said door mat intending to then step upon the deck, but by reason of the negligent and careless piling of said boards and of so unsecurely placing the door mat thereon the boards and door mat slipped when libellant stepped thereon, precipitating him heavily and violently to the iron deck; he landed upon said deck upon his right knee, greatly injuring it and causing a condition of acute synovitis, or what is commonly called "water on the knee," therein, and by reason of said fall libellant received other injuries and bruises and a severe shock to his nervous system; that the Jacob's ladder was so placed that in order to board the said steamship it was necessary for libellant to so step upon the said mat and pile of loose boards, and there was no other means provided by the said captain and master of the said steamship to reach the deck therein notwithstanding that it was his duty to provide a safe means for libellant to reach said deck and notwithstanding that it was possible for the captain and master to provide a safe means for libellant to board said vessel. And this libellant so fell and so received such injuries and bruises and shock, by and through the carelessness and negligence of the libellee, its owners and officers, and without fault or negligence on his part. [15]

III.

That by reason of the injury to the knee and by

reason of the other injuries and bruises and of said shock this libellant suffered and still suffers great pain; that by reason of all of said injuries aforesaid this libellant was confined to his bed and room and under the care of a physician for a period of eighteen days after the date of the said accident; that by reason of the said injury to libellant's right knee there will remain therein a chronic condition of acute inflammation of the knee-joint and libellant will be caused great pain and suffering the rest of his natural life; that by reason of said injury the cartilage in the joint of the right knee has been incurably injured, all of which will cause libellant great pain and suffering the rest of his natural life; that by reason of all of the injuries aforesaid libellant is caused to walk with a limp and with great uncertainty, that his right knee is likely to give way under the weight of his body and cause him to fall, and it has so given way and caused him to fall, and said condition is likely to become permanent, all to libellant's great pain, suffering, injury and damage; that by reason of all of the injuries aforesaid libellant is unable to board ships in the future, that boarding ships was an essential part of his duties as Acting Assistant Surgeon, United States Public Health Service, that he will probably soon lose his said position, and lives in constant fear of losing such position and being thrown upon the world with no certain means of livelihood; that by reason of said injuries, suffering, pain and shock, and by reason of all the premises, libellant has suffered and sustained damages in the amount of \$10,000.

IV.

That said injured knee and joint, and bruises, shock, suffering and pain, and all and singular the premises, are true and were occasioned, caused and brought about by reason of the carelessness and negligence of the said libellee, the steamship "Coolgardie," [16] and her owners and master, and without fault, want of care or negligence on the part of said libellant.

WHEREFORE, libellant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, issue against said British steamship "Coolgardie," her tackle, apparel, furniture, boats and appurtenances, cargo and freight money, and against all persons having or claiming to have any interest therein, that they may be cited to appear and answer all the matters aforesaid, and that this Honorable Court be pleased to decree the payment of the sum of \$10,000 to this libellant as and for damages by reason of the premises aforesaid, together with costs, and that the said steamship may be condemned and sold to pay the same, and that the libellant aforesaid may have such other and further relief in the premises as in law and justice he may be entitled to receive.

(Sgd.) WILLIAM F. JAMES,
Libellant.

THOMPSON & CATHCART,
Proctors for Libellant.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

William F. James, the libellant named in the foregoing libel, being first duly sworn, deposes and says: That he is the libellant named in the foregoing libel; that he has read said libel and knows the contents thereof, and that the matters and things therein alleged are true of his own knowledge, except as to such matters as may be therein stated upon information or belief, and that as to such matters he believes it to be true.

(Sgd.) WILLIAM F. JAMES.

Subscribed and sworn to before me this 14th day of February, A. D. 1918.

[Seal] (Sgd.) BERNICE K. DWIGHT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [17]

LET PROCESS ISSUE AS PRAYED FOR.

Dated at Honolulu, this 14th day of February,
A. D. 1918.

(Sgd.) J. B. POINDEXTER,
Judge of the United States District Court in and for
the District and Territory of Hawaii. [18]

Filed on return Feby. 15, 1918, at — o'clock and
— minutes — M. A. E. Harris, Clerk. (Sgd.)
Wm. L. Rosa, Deputy Clerk.

[Title of Court and Cause.]

Monition.

The President of the United States of America, to the
Marshal of the United States of America for the
Territory of Hawaii, GREETING:

WHEREAS, a Libel hath been filed in the District Court of the United States for the Territory of Hawaii, on the 14th day of February, A. D. 1918, by William F. James vs. The British Steamship "Coolgardie," whereof J. A. Thomson is and was master and captain, her tackle, apparel, furniture, boats and appurtenances and against all persons having or claiming to have any interest therein and against all persons lawfully intervening in their interests therein, for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said vessel, her tackle, etc., — may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., — may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelants.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant

to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Territory of Hawaii, on the 23d day of February, A. D. 1918, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon. J. B. POINDEXTER, Judge of said Court, at the city of Honolulu, in the Territory of Hawaii, this 14th day of February, A. D. 1918, and of our Independence, the one hundred and forty-second.

[Seal]

A. E. HARRIS,
Clerk.

By (Sgd.) Wm. L. Rosa,
Deputy Clerk.

THOMPSON & CATHCART,
Proctors for Libelant.

Monition issued Feby. 14, 1918. Returnable Feby. 23, 1918. [19]

MARSHAL'S RETURN.

In obedience to the within Monition, I attached the British S. S. "Coolgardie," therein described, on the 14th day of February, A. D. 1918, and have given due notice to all persons claiming the same that this Court will, on the 23d day of February, A. D. 1918 (if that day be a day of jurisdiction, if not, on the

next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same.

J. J. SMIDDY,

United States Marshal.

By (Sgd.) L. K. Silva,

Deputy.

Honolulu, February 14th, 1918.

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem. No. 170. William F. James, Libellant, vs. the British Steamship “Coolgardie,” Whereof H. A. Thomson is and was Lately Master and Captain, Her tackle, Apparel, Furniture, Boats and Appurtenances and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee. Appearance of Counsel. Filed Feby. 15, 1918, at 11 o'clock and X Minutes A. M. A. E. Harris, Clerk. (Sgd.) Wm. L. Rosa, Deputy Clerk. Robertson & Olson, Attorneys at Law, 863 Kaahumanu St., Honolulu, Proctors for Claimant. [20]

[Title of Court and Cause.]

Appearance of Counsel.

Now come Robertson & Olson and enter their appearance in the above-entitled cause for H. A. Thompson, master of the steamship “Coolgardie” and bailee

of said ship, her cargo and freight money, the claimant herein.

Dated Honolulu, February 14th, 1918.

(S.) ROBERTSON & OLSON,
Proctors for Claimant. [21]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem—No. 170. William F. James, Libellant, vs. The British Steamship "Coolgardie," Whereof H. A. Thomson is and Was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libelee, H. A. Thomson, Master and Claimant. Claimant's Answer. Filed Feby. 23, 1918, at 10 o'clock and X Minutes A. M. A. E. Harris, Clerk. (S.) Wm. L. Rosa, Deputy Clerk. Robertson & Olson, 863 Kaahumanu Street, Honolulu, Proctors for Claimant. [31]

[Title of Court and Cause.]

Claimant's Answer.

To the Honorable Judges of the United States District Court in and for the Territory of Hawaii:

The answer of H. A. Thomson, claimant in the above-entitled cause, to the libel of William F. James, the libellant in said cause, against the British steamship "Coolgardie," her tackle, ap-

parel, furniture, boats and appurtenances, and her cargo and freight money, the libellee in said cause, and against all persons lawfully intervening in their interests therein, alleges:

1. Answering Article I in the said libel, said claimant alleges that he is ignorant of the matters and things in said article alleged, so that he can neither admit nor deny the same, wherefore on that account he calls for proof thereof. [32]

2. Answering Article II in said libel, said claimant alleges that he does not know and is not informed whether or not the libellant in said cause was required on the date set forth in said Article II to board the British steamship "Coolgardie," for the purposes in said Article II set forth, and therefore neither admits nor denies the same, but leaves the libellant to the proof thereof; admits that on the 12th day of August, 1917, the said steamship "Coolgardie" was lying off the port of Honolulu and desired and requested entrance into the port of Honolulu and that it could not obtain such entrance without having the health of its crew first examined and passed upon; alleges that he does not know and is not informed as to whether or not the libellant was the officer detailed by the Public Health Service or otherwise to make such examination, or that the said libellant in such capacity proceeded to said steamship in a launch or otherwise, but admits that said libellant did board the said steamship on said 12th day of August, 1917, purporting to act in the capacity of an officer of the Public Health Service

for the purpose of making such examination; admits that he was the captain and master of said steamship, had a Jacob's ladder let down on the side of the said steamship for the purpose of providing a means for the proper officer to make such examination to board such steamship, and that only one Jacob's ladder was so let down and that said ladder provided the sole means for boarding said steamship at said time; alleges that he is advised that the allegations as to the duty of the owners of said steamship or of their agents or persons in charge, whether said claimant or any other person, to provide a safe and reasonable means for said libellant to board said vessel and that said libellant had the right to rely upon their so doing, are conclusions of law, and therefore said [33] claimant is not required to answer thereunto; admits that said libellant climbed up said Jacob's ladder but denies that upon his reaching the rail of said steamship or otherwise found that he could only get upon the deck thereof by stepping upon a pile of loose and unsecured boards covered by an unfastened and unsecured door mat, and denies that any boards in the course of access to said vessel from said ladder were unfastened or unsecure; alleges that he is ignorant as to whether or not the said libellant relied upon said claimant or his judgment for providing any means for boarding said vessel or whether the said libellant thought that the claimant had provided safe means or any means whatever for his boarding said vessel, so that he neither admits nor denies the same,

wherefore on that account he calls for proof thereof; denies that the libellant by reason of the negligent or careless piling of boards upon said vessel or of any insecure or unsecure placing of any door mat upon said boards or any boards or otherwise slipped or that by reason thereof, or that by reason of any other fact for which said claimant, steamship and officers were responsible, the said libellant was precipitated to the deck of the said vessel heavily or violently or otherwise; denies that the said libellant was precipitated upon any iron deck of said vessel; alleges that he is ignorant as to whether or not the said libellant was injured as set forth in said Article II, and therefore neither admits nor denies the same, wherefore on that account he calls for proof thereof; denies that the said ladder was so placed that in order to board the said steamship it was necessary for said libellant to step [34] upon any pile of loose boards and alleges that the means of boarding said vessel were safe and such that any person boarding said vessel in the exercise of due care could board the said vessel without risk of injury, or injury; alleges that he is advised that the allegation in said Article II that it was the duty of said claimant to provide safe means for libellant to reach the deck of said vessel, is a conclusion of law and therefore said claimant is not required to answer thereunto; denies that said libellant fell or received the injuries, bruises and shock alleged in said Article II by or through the carelessness or negligence of the libellee, its owners or officers, or that said libel-

lant received any injuries or bruises or shock by or through the carelessness or negligence of the libellee, its owners or officers; denies that the libellant fell or received any injuries, bruises or shock as alleged in said Article II without fault or negligence on his, said libellant's part; admits that the libellant in boarding said steamship on said 12th day of August, 1917, did fall on the deck of said steamship, but alleges that he is ignorant as to whether or not said libellant thereby or otherwise sustained any injury or injuries, bruise or bruises or shock, or, if any such, the character or extent of the same, and therefore neither admits nor denies the same, wherefore on that account he calls for proof thereof.

Further answering said Article II, said claimant alleges that the said libellant in boarding said steamship had and was provided with safe and secure means of access thereto, that adjoining the place where said ladder was fastened to the bulwark or rail of said steamship, on said 12th day of [35] August, 1917, there was a pile of lumber properly piled on the deck of said steamship, securely lashed to said deck and said bulwark, reaching approximately to within one and one-half feet of the top of said bulwark, and having a width of about two and one-half feet, providing a safe and secure step from the top of said rail and thence to the deck of said vessel, that a door mat had been placed and was on said pile of lumber opposite the place of entrance to said steamship from said ladder to provide a stepping place from said ladder, but that the top sur-

face of said pile of lumber was level, and said door-mat lying thereon was not a source of danger to said libellant in stepping thereon; that in proceeding from said ladder and bulwark in boarding said steamship, the said libellant instead of stepping onto said pile of lumber and thence to the deck, stepped on said pile of lumber and thereupon carelessly and negligently and without any negligence on the part of the said steamship, its owners or officers, jumped or leaped from said pile of lumber to the deck of the said steamship, and in so doing slipped on the deck thereof and fell on said deck, and that any and all injuries, bruises and shock suffered or sustained by said libellant in boarding said steamship on said 12th day of August, 1917, were caused by the negligence of said libellant in so jumping or leaping from said pile of lumber to the deck of said steamship.

3. Answering unto Article III in said libel, said claimant alleges that he is ignorant of all of the matters and things therein alleged, and therefore neither admits nor denies the same, wherefore on that account he calls for proof thereof. [36]

4. Answering unto Article IV in said libel, said claimant admitting only the matters and things in said Article IV realleged and hereinbefore admitted, and calling for proof of all those matters and things in said Article IV realleged, proof of which is hereinbefore called for, denies all matters and things in said Article IV realleged, which are hereinbefore denied, and specifically denies that the injury or in-

juries, bruises, shock, suffering and pain alleged in said Article IV were occasioned, caused or brought about by or by reason of the carelessness or negligence of the said libellee, said steamship "Coolgardie" or her owners or master, or without fault, want of care or negligence on the part of said libellant; and alleges that all of the same, if any there are or were, were caused solely by and through the negligence and carelessness of said libellant in jumping or leaping from said pile of lumber to the deck of said steamship, and that by the exercise of due care, that is to say, by refraining from so jumping or leaping to said deck, and by stepping from said pile of lumber to said deck, the said libellant would not have fallen on said deck and could have avoided all and every the injuries, bruises and shock, if any such were sustained by him, alleged in said Article IV and in said libel to have been sustained by him.

5. Further answering said libel, said claimant alleges that the said steamship is and was on said 12th day of August, 1917, a freighter engaged in the carrying of cargo, that the said pile of lumber was piled and lashed on said deck as aforesaid in the ordinary and usual course of business and in accordance with usual practice, that the means of boarding [37] said steamship provided on said 12th day of August, 1917, at the time said libellant boarded said steamship, were the ordinary and usual means provided for boarding vessels so lying, and were safe and secure.

6. Further answering said libel, said claimant alleges that the cargo and freight libelled herein were not on said steamship and did not constitute any part of her freight or cargo, on said 12th day of August, 1917, and that all freight moneys libelled herein have been contracted for and earned since said 12th day of August, 1917, and no part thereof was contracted for or had become due or owing on said 12th day of August, 1917.

7. That all and singular the premises are true.

WHEREFORE, said claimant prays that the said libel may be dismissed and that he may have his costs herein.

Dated, February 23d, 1918.

(S.) H. A. THOMSON,
Claimant.

ROBERTSON & OLSON,
C. H. O.,
Proctors for Claimant.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

H. S. Thomson, being first duly sworn, on oath deposes and says:

That he is the master of the British steamship "Coolgardie," and bailee of said steamship, her tackle, apparel, furniture, boats and appurtenances, and her cargo and freight moneys, and the claimant herein; that he has read the foregoing answer and

knows the contents thereof, and that the same are true.

(S.) H. A. THOMSON.

Subscribed and sworn to before me this 23d day of February, 1918.

(S.) FLORENCE LEE,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Service of the within answer admitted this 23d day of February, 1918.

THOMPSON & CATHCART,
By MATTHEWMAN,
Proctors for Libellant. [38]

Order Allowing Amendment to Pleadings.

From the Minutes of the United States District Court, Territory of Hawaii—Friday, March 8, 1918.

[Title of Court and Cause.]

On this day came the libellant, in person and with Mr. J. W. Cathcart and Mr. R. A. Vitousek, of the firm of Thompson and Cathcart, proctors for the said libellant, and also came Messrs. C. H. Olson and M. B. Henshaw, proctors for the claimant herein, and this cause was called for trial. Thereupon it appearing that the title of the pleadings and contents thereof referred to the claimant as J. A. Thompson instead of H. A. Thomson, with the consent of respective proctors, it was by the Court ordered that

said pleadings, etc., be amended to read H. A. Thomson. Thereafter the libellant was called and sworn and gave testimony on his own behalf. Libellee's Exhibit 1 was admitted in evidence and ordered filed. With consent of proctors for libellant, G. Provo was called and sworn and gave testimony on behalf of the claimant herein. It was then ordered by the Court, with consent of proctors, that this cause be continued to March 11, 1918, at 2 o'clock P. M., for further trial. [39]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty—In Rem.—No. 170. William F. James, Libellant, vs. The British Steamship "Coolgardie," etc., Libellee. H. A. Thompson, Master and Claimant. Stipulation and Order. Filed July 19, 1918, at — O'clock and — Minutes A. M. A. E. Harris, Clerk. (S.) Wm. L. Rosa, Deputy Clerk. Thompson & Cathcart, Proctors for Libellant. Robertson & Olson, Proctors for Claimant. [40]

[Title of Court and Cause.]

Stipulation.

WHEREAS a part of the testimony upon the hearing of the above-entitled cause has been taken before the above-entitled court with the Honorable J. B. Poindexter, Judge of said Court, presiding; and

WHEREAS, the said Judge is about to depart from the Territory of Hawaii for a temporary absence;

NOW, THEREFORE, it is hereby stipulated by and between the parties to said cause that the further hearing and trial of said cause be had in said court before the Honorable Horace W. Vaughan, Judge of said court, and that the same be decided by said last-named Judge upon the record, the evidence that may be further adduced, and the evidence already adduced as aforesaid, as shown by the reporter's transcript thereof, as if all of said evidence had been taken before said last-named [41] Judge, and as if said last-named Judge had regularly presided upon the hearing of said cause from the inception thereof.

Dated Honolulu, T. H., July 19th, 1918.

WILLIAM F. JAMES,

Libellant.

By THOMPSON & CATHCART,

His Proctors.

H. A. THOMPSON,

Claimant.

By ROBERTSON & OLSON,

His Proctors.

Order.

Pursuant to the foregoing stipulation, the above-entitled cause is hereby transferred for hearing and decision to the Honorable Horace W. Vaughan, Judge of the above-entitled court, according to the terms of said stipulation.

Dated July 19th, 1918.

(S.) J. B. POINDEXTER,

Judge United States District Court for the Territory of Hawaii. [42]

**Order Allowing Original Transcript of Testimony to
be Made a Part of the Record on Appeal.**

From the Minutes of the United States District
Court, Territory of Hawaii—Friday, November
1, 1918.

[Title of Court and Cause.]

On this day came Mr. R. A. Vitousek, of the firm
of Thompson & Cathcart, proctors for the libellant,
and also came Mr. C. H. Olson, of the firm of Robert-
son & Olson, proctors for the libellee and the claim-
ant, and this cause was called for the presentation
of libellant's bill of costs and approval of the de-
cree. Thereupon libellant's bill of costs and the de-
cree was approved and said decree signed, ordered
filed and entered. Thereafter respective proctors
stipulated that the bond on appeal herein be in the
amount of seven thousand five hundred dollars.
Mr. Olson then gave notice of appeal to the Ninth
Circuit Court of Appeals, and with consent of re-
spective proctors it was by the Court ordered that
the original transcript of testimony herein be made
a part of the record on appeal. [43]

Filed Oct. 28, 1918, at — O'clock and — Min-
utes, — M. A. E. Harris, Clerk. Wm. L. Rosa,
Deputy Clerk. [44]

Filed July 19, 1918, at — O'clock and — Min-
utes — M. A. E. Harris, Clerk. Wm. L. Rosa,
Deputy Clerk. [45]

[Title of Court and Cause.]

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[Title of Court and Cause.]

Before the Honorable J. B. POINDEXTER, Judge
of said Court.

APPEARANCES:

For the Libellant:

J. W. CATHCART and R. A. VITOUSEK, of
the Firm of Messrs. THOMPSON & CATH-
CART.

For the Libellee:

C. H. OLSON, Esq., of the Firm of Messrs.
ROBERTSON & OLSON.

Transcript of Testimony.

Honolulu, H. T., March 8, 1918. [47]

2:00 P. M.

Mr. VITOUSEK.—We are representing the libellant, William F. James. The libel as filed by Mr. James provides as follows: (Reads libel.) In connection with this I understand there is one mistake made in that the boards were lashed, and it subsequently shows such as true, and I ask that the libel be amended in that regard. The mat was placed upon the boards, and the mat, boards and deck of the ship was wet, and in stepping from the Jacob's ladder, the only means to reach the deck was on the mat, thence to the deck, and in stepping on the deck the libellant was caused to fall, the mat slipping from under his feet, and he fell to the deck, a distance of three or three and a half feet, causing the injury for which he claims damages. In order to facilitate matters, counsel for the libellee has agreed with us, subject to the Court's approval as follows: That the libellant, Doctor James, in boarding the steamship "Coolgardie," was in the course of his duty as a Public Health Service Examining Physician.

Mr. OLSON.—We admit it.

Mr. VITOUSEK.—And counsel desires that we simply put on evidence as to the accident and be then permitted to wait until counsel has put on his witnesses.

Mr. OLSON.—At this time particularly on behalf of the plaintiff in the case, H. A. Thomson, the master of the vessel, who has filed his claim, and the appearance of our firm as counsel and proctors for the claimant having been filed, I wish at this time

to call attention to the [48] fact that in the title of the cause and possibly in the body of the same the master is designated as J. A. THOMPSON, whereas the correct designation should be H. A. THOMSON, and I request that proctors for libellant join with us in moving that the pleadings in so far as they show that the master is named as J. A. THOMPSON, be amended to read H. A. THOMSON throughout, that being his correct name.

The COURT.—Let the correction be made with the amendment.

Mr. OLSON.—Now, if your Honor please, it is not at our request that the request as to proof be made as suggested. I understand proctors for libellant are engaged at the present time in a jury trial in the First Circuit Court of this territory, and in order to accommodate them as much as possible and also having due regard to the interests of the libellee and claimant herein, we have consented to the taking of the evidence of the libellant with regard to the circumstances in connection with the accident, understand that that testimony is to be supplemented later by them, possibly by the testimony of the custom-house boarding officer and the immigration office boarding officer. We under those circumstances are willing to agree that the libellant's testimony be taken with regard to the circumstances regarding the accident in connection with the accident, stipulating that they may withdraw the witness and later produce him in chief for the purpose of proving the injuries themselves. The accident and character of the actual injuries confining the testimony at this

time to the accident and the cause of the accident it being understood that that testimony with [49] regard to the accident and the circumstances surrounding the accident eliminating the nature of the injuries is to be supplemented by the testimony of these two officials, the custom-house boarding officer and the immigration boarding officer. Under these circumstances we are willing to proceed and are willing to put our testimony on by the knowledge of the witnesses who are employed upon the ship following the testimony of Doctor James. Is that satisfactory?

Mr. VITOUSEK.—With the exception, of course, which will be agreeable, I presume, to produce further witnesses on behalf of the injury to prove the injury.

Mr. OLSON.—The title of the cause defines the libellee as the British steamship “Coolgardie,” her tackle, apparel, furniture, boats and appurtenances and so forth, and against all persons having or claiming to have any interest therein and against all persons lawfully intervening in their interests therein, whereas the libel itself in the opening paragraph thereof alleges that this is the libel of the libellant against the British steamship “Coolgardie,” whereof J. A. Thompson is and was captain and master, against her tackle, apparel, furniture, boats and appurtenances and so forth, and the freight due for her cargo, and against the freight now or lately laden therein and against all persons intervening and so on, and suggest it should be admitted by counsel that the libel be confined to the vessel itself. The libel

cannot extend to the cargo or freight monies and—
Mr. VITOUSEK.—Yes; all right.

The COURT.—Let that understanding be entered.

[50]

Testimony of William F. James, for Libellant.

Direct examination of WILLIAM F. JAMES, for libellant, sworn.

Mr. VITOUSEK.—Your name, Doctor?

A. William F. James.

Q. And you are the libellant named in these proceedings? A. Yes, sir.

Q. I will ask your age. A. Fifty-seven.

Q. Fifty-seven; and your occupation?

A. I am a physician and surgeon.

Q. That is what you are occupied with at this time; are you practicing for yourself?

A. No, for the Government.

Q. And what is your connection with the Government? A. With the Government; yes.

Q. What is the connection?

A. I am Acting Assistant Surgeon in the Public Health Service.

Q. And where are you located in your work?

A. I am living on Quarantine Island.

Q. On Quarantine Island.

Mr. VITOUSEK.—It might facilitate matters if counsel will stipulate that the accident occurred and the time and place of the accident.

Mr. OLSON.—August 12, 1917, off the port of Honolulu, that is understood.

Mr. VITOUSEK.—Doctor, how long have you

(Testimony of William F. James.)

been a practicing physician?

A. Since 1893. [51]

Q. Since 1893? A. Yes, sir.

Q. Are you a graduate physician?

A. Yes, of the Tulane University, Louisiana.

Q. Did you get a degree? A. Yes, sir.

Q. Of what? A. M. D.

Q. When was it that you graduated?

A. In 1893.

Q. After graduation what did you do?

A. I returned to Texas which had been my home and practiced there in San Antonio.

Q. How long did you practice in San Antonio?

A. Until the Spanish War broke out in 98.

Q. And then what did you do?

A. Then I enlisted in the United States Army in the Rough Riders, First Volunteer Cavalry.

Q. And did you see service with them?

A. In the Philippines—

Mr. OLSON.—I suggest that is immaterial, your Honor.

Mr. VITOUSEK.—As far as the purpose, your Honor, of showing qualifications of following out his profession.

The COURT.—All right.

Mr. VITOUSEK.—How long did you so serve?

A. Until mustered out at the end of the actual campaign in Cuba.

Q. Then what?

A. Then I applied as contract surgeon for the United States Army and was passed after examina-

(Testimony of William F. James.)

tion, and went to the Philippines as contract surgeon. After being there a year, I was promoted to captain and assistant surgeon and discharged from the service in, I think, February, 1901. [52] They had no longer any use for the contract surgeons.

Q. And after that?

A. And after that I made application for this service, Public Health Service, and was accepted and sent here.

Q. That was, as I understand, after 1901?

A. Yes, I came here in 1903, I think it was June, 1903.

Q. Have you been engaged in work here continuously since? A. Continuously since.

Q. What was the nature of your practice during all of these periods as a physician?

A. Private practice and general practice.

Q. What is the nature of your work here?

A. Here it is,—we treat free of charge all sailors on United States boats, and also hospital treatment and outdoor patients treatment, and boarding vessels for the purpose of examining the crew and passengers on board the boats as to their health, and contagious diseases especially.

Q. It has been admitted that the accident occurred on August 12th. Doctor, I will ask you on what day August 12th fell in 1917, what day of the week? A. On a Sunday.

Q. In proceeding to the "Coolgardie," upon what launch did you go?

A. I was on the customs launch.

(Testimony of William F. James.)

Q. Do you ordinarily go to the vessels upon the customs launch? A. No, we have our own launch.

Q. Why did you go to the vessel on the customs launch on this day?

A. At that time in order to give the launch crews a day off [53] we alternate Sundays with our launch and the customs launch and that day happened to be the day for the customs launch to board.

Q. Who, if any others, were with you on board the launch?

A. Mr. Reeves the customs inspector, Mr. Brown the immigration inspector, and Mr. Milligan, I think, and the broker for the Inter-Island.

Q. Mr. Milligan?

A. Mr. Milligan, I think his name is.

Q. They were with you this day? A. Yes.

Q. When the launch reached the vessel what means were provided to get on board?

A. A Jacob's ladder was over the side.

Q. Which side is that?

A. Well, I am not sure whether it was the port or starboard. It was the lee side of the—

Q. Lee side? A. Lee side of the boat.

Q. Was there any other means of boarding the boat? A. No.

Q. That was the only visible way? A. Yes.

Q. How did you get from the launch to the Jacob's ladder?

A. The launch goes up as close as possible and we watch our opportunity and go from one to the other, jump from the launch to the ladder.

(Testimony of William F. James.)

Q. Jump from the launch to the ladder?

A. Yes.

Q. How high was this ladder,—in other words, how far was the boat out of the water to the top of the railings? [54]

A. I don't think it could have been more than fifteen or twenty feet; she was loaded; it is not so high.

Q. Did you board the boat by this Jacob's ladder?

A. I did.

Q. Explain how you boarded the boat, the way you went up.

A. On getting on the Jacob's ladder I climbed up it to the top of the railing, and on reaching the top of the rail and looking over I saw that there were a pile of plank immediately under the rail, and immediately in front of the ladder was a mat. I suppose the distance from the top of the rail to the mat was about eighteen inches, possibly two feet, and I stepped off the rail on to the mat, and in stooping down to jump down the mat slipped and I was precipitated to the deck.

Q. I will ask you first, you say the rail was an open rail?

A. No; the rail of the boat is known as the part above the deck on the side, usually termed the rail. On some boats it is open like passenger boats.

Q. Was it open on this?

A. No, it was not open on this boat.

Q. Then as you say you saw lumber as you got over the top?

A. Yes, on reaching the top of the rail the lumber

(Testimony of William F. James.)

was piled longitudinally with the rail immediately under the ladder.

Q. And that is about how far?

A. From the top of the rail to the mat, eighteen inches or possibly two feet, it was not very far.

Q. About how wide was the pile of lumber?

A. How wide I could not say,—oh, you mean the width?

Q. Yes. [55]

A. I don't think more than two feet, possibly two planks in width; it might have been only one, I am not quite sure about that, but I think two feet at least because the mat was on the outer edge of it and it was very close to the rail.

Q. The mat was very close to the rail?

A. Yes, the mat was very close to the rail.

Q. In reference to this table here, presuming that that was the pile of the edge of the pile of lumber, how was the mat placed, lengthwise or crosswise?

A. The mat was immediately in front of the Jacob's ladder, and the edge of the mat was about parallel with the edge of the lumber, close to the edge.

Q. About how wide was the mat, as according to the best of your knowledge?

A. It was an ordinary door mat, as I remember; I think it was about eighteen inches wide and probably two or two foot six long.

Q. Eighteen inches wide by two or two feet six inches long?

A. About two feet six inches long, I think.

(Testimony of William F. James.)

Q. What was the condition of the lumber and the deck and the mat?

A. Everything was wet. It had been raining, evidently, and the lumber was wet and the mat was wet and I know the deck was wet.

Q. What was the distance, according to the best of your recollection, from the top of the pile of lumber to the deck?

A. About three feet six inches, maybe a little more than that.

Mr. OLSON.—What was that answer? [56]

A. Three feet six, maybe a little more than that, between the top of the lumber and the deck.

Mr. VITOUSEK.—Referring back to the answer, that is, the testimony in regard to the accident, will you state again the accident itself?

A. Yes, I think I can illustrate it. Supposing this was the edge of the lumber, I was standing on the mat this way and had stooped down in order to jump, jump off, and did jump off but the mat slipped and I was precipitated to the deck almost head first.

Q. What part of your body hit the deck first?

A. My knee hit it first, and possibly my hands, because I was nearly on my head.

Q. What knee? A. Right knee.

Q. At that time did you stay in that position, or what position did you take then?

A. On landing I keeled over on my side and lay there.

Q. How did you get up?

A. I was helped up by Mr. Reeves, and I am not

(Testimony of William F. James.)

sure whether Mr. Brown was there or not, but Reeves I know helped me.

Q. You know Mr. Reeves helped you up?

A. Yes, I know Mr. Reeves helped me up.

Q. Where did they help you to?

A. They helped me into the captain's room.

Mr. OLSON.—I would suggest to counsel that from the time he fell to the deck, I assume the fact forms no part of the negligence, anything done after he actually fell to the deck, there not material to what happened to Doctor James afterwards. [57]

Mr. VITOUSEK.—Of course, as to showing the injuries, of course we want to continue with.

Mr. OLSON.—We will admit that Doctor James was hedped up into the chart-room of the steamer and there, I think, some stimulant given him, and eventually he came to the boarding boat and went off again.

Mr. CATHCART.—Was he carried down?

Mr. VITOUSEK.—He was helped down, and will you admit he fainted?

Mr. OLSON.—I will admit he fainted on the boat.

The COURT.—This goes to the extent of the injury and not to the negligence?

Mr. VITOUSEK.—Yes.

Q. When you first stepped over the rail did you see any members of the ship's crew around?

A. Yes, there were some men on the deck, but I don't think there were anybody very close; I am not quite positive. There were some men on the

(Testimony of William F. James.)

deck, but whether they were very close I am not sure.

Q. Do you remember who the men were?

A. No, I could not tell you. I don't think the Captain was there. He was the only one whose face I recollect.

Mr. OLSON.—I understand at this time you wish to withdraw Mr. James and produce him later?

Mr. CATHCART.—Yes, as far as the examination in chief is concerned at this time the examination having been completed as to where the accident itself occurred. [58]

Cross-examination of WILLIAM F. JAMES.

Mr. OLSON.—Doctor James, you say you do not recollect any one of the individuals on board the vessel at the time you fell, outside of the captain himself, and you do not think he was actually present; is that correct?

A. That is correct, yes; I would not remember their faces.

Q. You would not remember their faces?

A. I think not.

Q. Do you remember the names of any of the individuals? A. No.

Q. Had the customs official, Mr. Reeves, or the immigration official, Mr. Brown, come aboard at the time that you fell?

A. The usual custom in boarding—

Q. No, had they come aboard when you fell?

A. No, the doctor comes first.

Q. Do you know whether or not Mr. Reeves or

(Testimony of William F. James.)

Mr. Brown, that is, the customs official on the one hand and the immigration official on the other, saw you fall?

A. I cannot say positively. Mr. Reeves was immediately behind me on the ladder. If he was high enough to look over the rail he could have seen, but I don't know whether he was or not.

Q. Yes, and Mr. Brown followed him?

A. Yes.

Q. So that Mr. Reeves couldn't see and Mr. Brown couldn't see? A. No.

Q. Did anyone else, as far as you know, outside of the actual [59] employees of the vessel itself go on board of that vessel prior to your boarding that vessel that morning? A. The pilot only.

Q. Do you know whether he saw the accident?

A. No; I spoke to him about it, asked him whether he did, and understand he said he did not.

Q. He didn't see you fall? A. No.

Q. That pilot was Pilot Macaulay, was it not?

A. Yes, Pilot Macaulay.

Q. He is at present a pilot in this harbor, is he not? A. Yes.

Q. Now, how high is the top of the rail from the deck of that vessel, or was it, at the time you boarded the vessel this morning?

A. I can estimate it; I should say about five feet.

Q. About five feet; would you say that if—you are estimating it—is that more or less in your judgment? A. It is an estimation, you understand.

Q. I know, but if as it is a mere estimate on your

(Testimony of William F. James.)

part, in your judgment would it be more or less if you are not exactly right in saying about five feet.

A. Well, that is rather hard to say.

Q. It might be more?

A. It might be a little more.

Q. Do you think likely it was less?

A. It is likely, also, to be a little less.

Q. In other words, you are not sure; that is mere approximation. A. I am not sure; no.

Q. Now, the rail is the top portion of the structure of the [60] bulwark of the vessel, is it not?

A. Yes.

Q. In the libel you allege that you were precipitated from this pile of lumber that you speak of to the iron deck of the vessel. A. Yes.

Q. You remember that allegation in your libel, do you not? A. Yes.

Q. Is it an iron deck?

A. I thought it was; I was not in a position to examine the boat when I fell, and I was semi-conscious. I thought it was an iron deck, but of course I couldn't swear that it was; I know it was hard enough.

Q. In other words, you might have been mistaken when you alleged in your libel that it was an iron deck.

A. I might have been mistaken.

Q. But of course that doesn't make any difference because one is as hard as the other; isn't that right, Doctor? A. I know it was hard enough.

Q. Exactly. Now, from the top of the rail to the

(Testimony of William F. James.)

top of this pile of lumber on which the mat was placed, you estimate that difference in height to be how much?

A. About three feet six, maybe a little—

Q. No, from the pile of the lumber to the top of the rail.

A. Oh, I should say about eighteen inches, I think.

Q. Now, you are approximating there again, are you not estimating, Doctor? A. Yes.

Q. Now, in this instance, do you think, if you were mistaken, [61] at all, it would be more or less?

A. Probably less, I should think.

Q. Yes, it might have been less than a foot and a half?

A. It might have been a little less than a foot and a half.

Q. And from the top of the pile of lumber or timber to the deck, your best judgment is that the distance is how far? A. About three feet six inches.

Q. Three feet six inches?

A. That is possible; it might be a little more.

Q. A little more or it might have been a little less?

A. No, I don't think less.

Q. You don't think less? A. No.

Q. It might have been higher, though?

A. It might have been more than that.

Q. But you are sure it is at least three and a half feet? A. Three and a half feet.

Q. I see; do you think from the pile of lumber to the top of the rail it might have been as little as a foot?

(Testimony of William F. James.)

A. My impression is it is a little more than that.

Q. Your impression is between a foot and a foot and a half? A. I am pretty sure; yes.

Q. When you first stepped off the rail what did you first step on,—the lumber itself or the mat?

A. I think on the mat. I don't—as I remember, I don't think there is enough space between the mat and the rail to have stepped on.

Q. And this mat was lying flat on top of the lumber, was it? A. Flat.

Q. How near to the edge, the outer edge of the lumber pile? [62]

A. It was right close to it, practically on it.

Q. Pat, or an inch or two from it?

A. No, on the edge.

Q. Practically flush with the edge? A. Yes.

Q. I see; you observed that, did you, when you stepped off the rail?

A. Yes, I looked for a place there purposely for me to step on.

Q. I see; now, how large is this mat?

A. Beg pardon?

Q. How large is this mat?

A. It looked to me as though it was an ordinary door mat; I should say eighteen inches wide by two feet six, perhaps.

Q. Yes; when you speak of an ordinary door mat will you please describe it as to whether it was a woven mat or some other kind of material?

A. No, it was what you would call copra, a coconut mat.

(Testimony of William F. James.)

Q. Cocoanut mat?

A. An ordinary rough door mat; it was not a hand-made thing.

Q. You mean one with fibre sticking up, do you not? A. I think so.

Q. Yes; I will show you a mat and ask you if this was about the kind of a mat? A. It was.

Q. (Handing witness a mat.) I will show you a mat and ask you if this was the kind of a mat it was.

A. I think it was—it is my impression it was such a mat.

Mr. OLSON.—I will introduce this mat in evidence and ask it be marked.

(Mat received in evidence and marked Libellee's Exhibit 1.) [63]

A. It resembles that very much.

Q. Are you able to say whether or not this is the mat? A. I couldn't say.

Q. Might this have been the mat?

A. It might have been; I couldn't say that it was.

Q. Yes; now, this is—calling your attention again to this mat, Doctor, you will observe, Doctor—

A. Another thing, now, may I amend that a little?

Mr. OLSON.—Anything you wish to say, Doctor.

A. I am satisfied that the mat was a little more ragged than that, that was the form of the mat, but it was a more ragged mat; it was not as new as that.

Q. But that kind of a mat?

A. That kind of a mat, but I am sure the edges were more ragged than that.

Q. I see; now, as to its approximate size, would

(Testimony of William F. James.)

you say that, as you remember it fairly well, is the size of the mat? A. I think so.

Q. As you remember it, it was just exactly the kind of a mat as that was, except that the edges were a little ragged? A. Yes, I think so.

Q. Now, as to the worn character of this mat, did you observe that the edges were ragged?

A. No, I had glanced at it as I come up from the deck,—as I got up from the deck, but I didn't observe it as I stepped on it.

Q. As you got up from the deck, did you say?

A. As I got up from the deck.

Q. You had glanced at it?

A. I had glanced at it. [64]

Q. Did you examine it carefully?

A. I remarked at the time that the mat had slipped.

Q. But did you notice that it was ragged?

A. No, I was nearly fainting.

Q. Did you step over to the pile of lumber to see what kind of a mat it was? A. No.

Q. Then you may have been mistaken as to its being ragged, then?

A. No, that is my impression that it was.

Q. But you got that impression after you got up from the deck, having fallen? A. Yes.

Q. And you said a few moments ago that you were half dazed when you arose from the deck.

A. Yes.

Q. Did you recover from that half-dazed condition when you got to the chart-room?

(Testimony of William F. James.)

A. I wasn't out of my mind at all.

Q. I mean from this half-dazed condition you speak of.

A. No; I was helped to the chart-room and there fainted.

Q. Now, to what extent was it ragged, only the edges—had ragged portions sticking out?

A. As I remember, the surface was in good condition.

Q. Intact in other words, only the edge of this mat. A. Yes.

Q. Now, you will observe that this rug is longer, has a greater length than its width. A. Yes.

Q. Which way was the mat lying with reference to the lumber, [65] the lumber pile, lengthwise with the pile or crosswise out towards the deck?

A. Lengthwise with the pile; I don't think there was room on the lumber to be the other way.

Q. You are quite sure of that? A. Yes.

Q. When did you observe it was so placed, when you were about to step on it or afterwards?

A. When I stepped over the rail.

Q. When you were about to step on it?

A. When I was about to step on it.

Q. I see. And the lengthwise edge, the outer or lengthwise edge of the rug was practically flush with the edge of the lumber pile? A. Yes.

Q. And practically no space between the inner lengthwise edge of the rug and the bulwarks?

A. Very little.

Q. Upon what part of the rug did you step when

(Testimony of William F. James.)

you stepped down from the rail?

A. Well, I must have stepped somewhere near the center of it.

Q. About the middle of the rug?

A. About the middle of the rug, yes.

Q. Was the rug lying flat upon the lumber pile?

A. Yes, sir.

Q. It was? A. Yes.

Q. There wasn't any fold in it? A. No.

Q. It was not turned over, bent back, or anything of that sort? A. No.

Q. And it appeared to be a rug lying there for the purpose of [66] stepping upon it from the rail?

A. Yes.

Q. In boarding the vessel from the ladder?

A. Yes.

Q. Will you please look at that, Doctor, as to its thickness and weight?

A. I could not tell you anything about that; I did not pick up the mat or handle it in any way.

Q. You are not willing to state upon your oath that the rug that was there, or the door mat there was any less heavy than this?

A. No, of course I did not handle the mat at all; I have no way of knowing that.

Q. Your general observation was that it was a mat like this with the exception that the edges might have been frayed and ragged? A. Yes.

Q. Now, when you came aboard, Doctor, will you state how you climbed over the rail?

A. I just put one leg over and then the other.

(Testimony of William F. James.)

Q. In other words, you went astride the rail, put one foot over and lifted the other over afterwards?

A. Yes; my usual way of boarding is to put one leg over and then the other, and get in a sitting position on the rail.

Q. And you did in this case get in a sitting position on the rail, did you?

A. Yes, and then stepped off.

Q. And your best recollection is now that you got in a sitting position on the rail and then stepped off? [67]

A. Yes, I probably got in a sitting position and then stepped on the mat.

Q. Then the mat according to your testimony was about a foot and a half below the top of the rail?

A. Yes.

Q. On which you were, in a sitting position.

A. No, I got on the mat from the rail.

Q. Yes, you were on the rail which was about a foot and a half above the level of the mat?

A. Yes.

Q. With your feet on the mat?

A. No, I don't know about that; I had to step from the rail on the mat, and on the mat I stood up.

Q. You got in a standing position on the mat?

A. Yes.

Q. Then what did you do?

A. Then I jumped from the mat to the deck.

Q. And in starting to jump off from the mat to the deck did you observe then what height it was from the mat on the lumber pile or where you were

(Testimony of William F. James.)

standing, to the deck?

A. It was an easy jump, about three feet six or a little more.

Q. And there you stood on the mat and jumped?

A. Yes.

Q. And as you jumped what happened?

A. The mat slipped and I was precipitated almost on my head.

Q. I see; in other words, your feet went backwards and your head forwards?

A. I don't think my feet went backwards.

Q. Well, which way did they go? [68]

A. In jumping in a position like this a man doesn't step back here and jump; he gets to the edge, and I was in that position and stooping down and jumped off, and the mat went down with my feet.

Q. I see; in other words, you got to the edge of the mat which was on the edge of the lumber pile?

A. Yes.

Q. And as you stood on the edge of the mat at the edge of the lumber pile you bent your knees and got in a crouching position, and in jumping the mat slipped with your feet?

A. That is the way I understand it was.

Q. And you were thrown on the deck? A. Yes.

Q. Now, in what position was the rug in after you fell to the deck before anybody approached you?

A. I don't remember at all.

Q. Did you observe it at all? A. No.

Q. You did not? A. No.

Q. Do you know whether the rug was on top of

(Testimony of William F. James.)

the lumber pile at all from the moment you left the lumber pile and landed on the deck?

A. Well, I didn't observe the mat at all after I fell.

Q. I see.

A. I think it remained there.

Q. You think it remained on the lumber pile?

A. Yes.

Q. I see; now, in stooping down and jumping down to the deck did you place your hands upon the lumber pile to assist yourself?

A. No, I didn't do that; it was lower than my body. [69]

Q. This rail here of this witness-box, Doctor, how do you think that compares in height with the top of the lumber pile? A. To the deck?

Q. Yes, down to the floor?

A. I should say it was about the same.

Q. About the same? A. About the same thing.

Q. And you did not place your hands on the lumber pile itself to assist yourself in stepping down to the deck? A. No.

Q. Did you turn to one side or the other to see whether there was any other mode of getting down to the deck that was more convenient?

A. No, I did not.

Q. You did not look to see? A. No.

Q. In other words, you stepped right to the rug, got to the edge of the mat and tried to jump down to the deck? A. Yes.

Q. You didn't stop to look to one side or the other,

(Testimony of William F. James.)

didn't wait for any instructions from anybody; is that correct?

A. Nobody there to give me any instructions.

Q. Nobody there; how near was the nearest person?

A. I noticed men on the deck but I couldn't say how close the nearest one was.

Q. About how far?

A. Well, I wouldn't like to say. They were not far off; they were within speaking distance.

Q. When you say speaking distance, it might be a hundred yards or five feet. [70]

A. I think probably the nearest man was as near as you are to me.

Q. Seven or eight feet? A. Yes, about that.

Q. But you did not wait to ask whether there was any other mode of getting down, did you?

A. No, that has not been my custom to do.

Q. In other words, you saw the mat there and saw the deck some three feet six or four feet below and got to the edge of the lumber and jumped down.

A. Yes.

Q. And in doing so the mat slipped and you catapulted to the deck? A. Yes.

Q. Did you observe afterwards whether or not there was a more convenient way of getting down from the top of that lumber pile to the deck?

A. I did not, but I don't think so.

Q. Did you look to see?

A. I went back the same way.

(Testimony of William F. James.)

Q. Exactly; did you observe how the lumber was piled?

A. Yes; naturally I observed the lumber was piled there.

Q. Did you observe carefully how the lumber was piled? A. No, I did not.

Q. Did you take any particular note as to the kind of lumber that composed the timber in that pile?

A. I did not.

Q. Did you take any particular note as to the length of the pile along the bulwarks?

A. I did not take any particular notice of it. No, I can't [71] say how long, but they were considerable length, though.

Q. Ten, fifteen, twenty feet?

A. Well, probably over fifteen feet, I think.

Q. Now, was the top of the lumber pile irregular or level? A. No, it was level.

Q. Did you stumble on any pieces of lumber in jumping down?

A. No, to the best of my recollection there was nothing on the lumber except that mat.

Q. I know, but did any piece of lumber cause you to stumble? A. No.

Q. In other words, the lumber was perfectly square and solid?

A. The lumber did not move, if that is what you mean.

Q. You did not stumble on any piece of lumber or timber? A. No.

Q. Or anything else except the mat?

(Testimony of William F. James.)

A. I don't think I said on anything but the mat.

Q. And the top of the lumber pile was level?

A. Yes, I think it was.

Q. As far as you observed, it was level.

A. It was level.

Q. And square? A. Yes.

Q. Did you observe whether or not that lumber pile was lashed? A. Was what?

Q. Lashed. A. No, I didn't observe that.

Q. And did you observe either before or during the time you fell down, what the condition of the end of the lumber pile there fore or aft was?

A. I—I don't remember; I didn't notice the ends of the lumber. [72]

Q. So you don't know?

A. No; I would like to make an explanation, if I may.

Q. Very good, we are willing to listen.

A. In my libel I spoke of some *lose* planks on the inner side of the lumber. I did not mean to convey the idea that they were *lose* in the manner of not being lashed; I mean not an integral part of the ship.

Q. In other words, not part of the structure of the ship?

A. Not a part of the structure of the ship; that is what I mean.

Q. So as far as this pile of lumber is concerned it was constructed the same as one piece of the structure placed next to the bulwarks, but not a part of the ship, simply resting there solely?

A. I don't remember whether it was lashed or not.

(Testimony of William F. James.)

Q. But you didn't feel any part of the timber pile or lumber pile move?

A. I don't think any part of the lumber pile moved.

Q. You did not observe the after end of that lumber pile at all, did you?

A. No, I think one end of the lumber pile was up against the housing.

Q. In other words, where the break is of the bridge?

A. Yes, I am not positive, but I think it was very close to it, anyhow.

Q. Did you see the bitts next to the bulwarks?

A. I didn't notice.

Q. Do you know what bitts are?

A. Yes, I know what bitts are. [73]

Q. But you didn't notice them?

A. No, I didn't notice them.

Q. In other words' you didn't make any observation of that lumber pile at all outside of what you observed in stepping down on it—

A. No.

Q. —up to the time of your fall.

A. No.

Q. And you didn't make any examination of it afterwards?

A. No, I did not.

Q. Now, Doctor, what made that mat slip, that door mat slip?

A. Well, I can't say; it was wet, I remember that. It was very wet, and I think it had been raining. The lumber was wet, and the mat itself was wet.

Q. How long did it take you in this operation, stepping from the rail to the mat and jumping to the

(Testimony of William F. James.)

deck? A. Only a few moments.

Q. Half a second, probably?

A. More than that.

Q. More than that? A. More than that.

Q. How much—half a minute?

A. I don't think more than three or four seconds. I wasn't in any great hurry, particularly.

Q. But you did not examine that mat after you fell? A. No, not after I fell.

Q. But you did observe it was wet?

A. Yes, I observed it was wet when I stepped off on it.

Q. What indications of dampness or wetness was there that called your attention to the fact of its being wet?

A. Naturally the color, for instance. If you wet that it is darker, and besides, you can tell whether you are [74] stepping on a wet mat or a dry one.

Q. I see; you observed from its color that it was wet?

A. Partly from the color and partly from stepping on it. You could see if that was wet, if it was wet.

Q. Now, I will call your attention to exhibit 1, this mat, which you say is practically the same except that the edges might have been frayed or ragged, and you say it was wet from its color when you stepped on it?

A. Not exactly from the color; you could tell by looking at it.

Q. You noticed it was wet by looking at it?

(Testimony of William F. James.)

A. Yes, when I stepped on it, and the lumber was wet and the deck was wet.

Q. When you stepped over the rail you looked down and saw the mat? A. Yes.

Q. You saw that it was wet? A. Yes.

Q. You saw that before you actually got on to it for the purpose of leaping down to the deck?

A. Yes.

Q. And when you stepped upon the mat you don't mean to say you immediately got over to the edge of the mat and jumped, do you?

A. Certainly I must have got almost immediately.

Q. Well, didn't you first step about the middle of the mat, as you testified a short time ago?

A. Yes.

Q. And from there you stepped to the edge of the mat for the purpose of jumping down?

A. And prepared to jump; yes. [75]

Q. When you first stood upon that mat you observed from the feeling that it was wet, did you?

A. Yes.

Q. And then you stepped to the edge of the mat?

A. Yes.

Q. And then jumped? A. Yes.

Q. And then you say the mat slipped?

A. And then the mat slipped.

Q. Now, how wet was it?

A. I don't know, it looked to me as if it had been out in the rain, the lumber was wet, and the mat I know was wet, and the lumber was wet and the deck was wet.

(Testimony of William F. James.)

Q. Looked as though it had rained? Of course you will appreciate, Doctor, that things may become wet otherwise than by rain. A. Yes, certainly.

Q. Now, did you observe before you fell that the decks were wet?

A. No, I don't think I observed that.

Q. You did not look to see? A. No.

Q. You simply leaped without seeing the condition of the deck? A. I know the planks were wet.

Q. You know that the planks were wet?

A. Yes, that the mat was on.

Q. Did you observe that by looking or feeling?

A. Well, the condition of the decks and the lumber more than the mat itself.

Q. Now, when you stepped on the mat did you observe evidences of water spouting up from the mat itself? A. Nothing like that. [76]

Q. Did you see any actual water? A. No.

Q. Simply that it was damp?

A. Yes, simply that it was damp.

Q. Do you know whether it was damp clear through or not?

A. I couldn't say; I didn't take it up.

Q. What time did you start from the dock in Honolulu to go to the vessel?

A. We always leave, when a boat comes early in the morning, at half-past six.

Q. Did you start at half-past six this morning?

A. I think so; she came in early.

Q. How long did it take you to get to where the vessel was anchored in your launch, or in the launch

(Testimony of William F. James.)

that you were in that morning?

A. About fifteen minutes, I suppose.

Q. And another three or four minutes to get aboard? A. Yes.

Q. And you left at half-past six?

A. Yes, we always leave at half-past six, providing the boat was in all night.

Q. Was this one in before half-past six?

A. I think so, because we left about half-past six.

Q. And you boarded that vessel by seven o'clock?

A. Just about.

Q. And Mr. Reeves and Mr. Brown, the immigration inspector on the one hand and the customs inspector on the other, were in the same launch with you? A. And the broker of the Inter-Island.

Q. And the broker also, did he go aboard? [77]

A. Yes.

Q. Before or after you?

A. No, he goes after everybody.

Q. In other words, he did not come aboard until after Mr. Brown, the immigration official, had gone aboard?

A. Probably not; I did not see him, but that is our usual way.

Q. Now, was there any slope to the deck—any slope to the top of this pile of lumber, any slope?

A. No slope except what the natural motion of the boat would make.

Q. I see; in other words, it was a level lumber pile but it might have varied somewhat with the motion of the boat.

(Testimony of William F. James.)

A. With the motion of the boat.

Q. What kind of a morning was this—cloudy morning, rainy morning, clear morning, or a fair morning? A. It was clear when we boarded.

Q. What was it when you left the dock?

A. Clear.

Q. What was it an hour earlier than that, or an hour preceding that? A. I couldn't say.

Q. You had, practically speaking, just arisen from your sleep, had you not? A. Yes.

Q. And went to the dock and found it clear and a fair day and proceeded to the vessel, clear and fair going to the vessel, and it was clear and fair boarding the vessel? A. Yes.

Q. Do you know whether it rained during the night? [78] A. No, I don't know.

Q. You don't know; was it daylight or dark?

A. Daylight.

Q. Full daylight?

A. Yes, it was in August.

Q. In other words, when you got to the top of the rail and look over you were perfectly able to see the pile of lumber there, were you? A. Yes.

Q. And perfectly able to see the mat? A. Yes.

Q. Perfectly able to see the height from the top of the rail to the mat? A. Yes.

Q. Perfectly able to see the height from the top of the mat to the top of the deck? A. Yes.

Q. And perfectly able to see the deck and the condition it was in? A. Yes.

Q. And you could have seen each end of the pile of

(Testimony of William F. James.)

lumber, if you had looked you could have seen the condition of the ends of the pile of lumber?

A. No, not without walking over them.

Q. Well, if you had walked over them you could have seen them, couldn't you?

A. Yes, if I had walked over.

Q. Isn't it a fact, Doctor James, that as far as you know this was a pure accident, pure and simple?
[79]

A. I do not think so.

Q. Well, what was it that caused you to fall to the deck? A. The slipping of the mat under my feet.

Q. I see; have you ever stepped on mats before?

A. I have been boarding over fourteen years.

Q. Have you ever stepped on mats, not necessarily on ships but otherwise before? A. Certainly.

Q. Have they ever slipped under you before?

A. No, I didn't ever jump off—

Q. Well, have you ever had a mat slip from under your feet before?

A. Not that I can recollect any such circumstance.

Q. Now, as I understand it, when you stepped from the rail to the middle of the mat you came down with both feet on the mat? A. Yes.

Q. And then it was an appreciable moment of time that expired during which you stepped with both feet to the edge of the mat? A. Yes.

Q. And then you were conscious of the fact of standing on the edge of the mat?

A. Certainly, I got ready to jump off.

Q. You are conscious of that? A. Yes.

(Testimony of William F. James.)

Q. And you crouched down, your knees bending?

A. Yes.

Q. And your body bent at the middle? A. Yes.

[80]

Q. About to jump down to the deck? A. Yes.

Q. You did not place your hands on the lumber pile? A. I don't remember it at all.

Q. And you did jump? A. Yes.

Q. And in jumping, the mat slipped and you fell to the deck? A. Yes.

Q. You could have placed your hands on the lumber pile, could you not?

A. I suppose I could; yes.

Q. You could have placed your knees on the lumber pile and step by step got to the deck, couldn't you? A. I could have; yes.

Q. Easily? A. Yes.

Q. Now, Doctor, you read the libel you swore to in this case, did you not? A. Yes, I did.

Q. Carefully? A. I think I understood it.

Q. Understood it perfectly? A. Yes.

Q. What did you mean by saying a pile of loose boards?

A. I just explained that to you just now.

Q. And that is the only explanation you have got to make, is it, Doctor?

A. My meaning is not loose in the sense that they moved, but in the sense that they were not an integral part of the ship itself.

Q. What *what* character of negligence or carelessness did you observe in the piling of this lumber or

(Testimony of William F. James.)

timber? Did you hear my question? [81]

A. No, I did not.

Q. What character of negligence or carelessness did you observe in the piling or placing of this lumber? A. I did not observe any.

Q. None at all? A. No.

Q. In other words, as far as you know there was no negligence or carelessness in the piling of the lumber there.

A. Not carelessly piled that I know of.

Q. No, but you alleged that in your libel, did you not? A. That it was carelessly piled?

Q. Yes.

A. I don't think I intended that.

Q. You did not intend that?

A. I don't remember that.

Mr. OLSON.—(Reading:.) By reason of the negligent and careless piling of said boards and of so unsecurely placing the door mat thereon, the boards and door mat slipped when libellant stepped thereon precipitating him to the deck and so forth.

Q. You did not intend to say that, did you?

A. I didn't intend that the boards slipped; I don't think they did.

Q. And you did not mean to say that the negligent—that they were negligently piled or placed?

A. Well, I don't know what you would call it, negligently piled.

Q. Were they negligently piled?

A. I couldn't say: I am not posted in the arrangement of things, how they should be arranged on a ship.

(Testimony of William F. James.)

Q. Was there anything that called itself to your attention, [82] Doctor, that led you to conclude that they were negligently or carelessly piled or arranged?

A. I don't think the lumber had anything to do with it in the way that they moved, in the meaning that it moved.

Q. Did you observe anything which caused you to conclude that they were carelessly or negligently piled or placed? A. I did not.

Q. You did not? A. No.

Q. Now, as to the wet condition of this lumber pile; how wet was it?

A. Well, the surface was all wet, I don't know how many planks deep the rain or whatever it was, or it may have been the sea—

Q. Was there any actual floating water on the surface of the boards of this pile? A. No.

Q. Simply that it was damp? A. It was wet.

Q. Well, when you say it was wet it might have water lying on it or it was damp in appearance?

A. No, it was damp; it might have been just here and there all over the surface.

Q. I see, but no fluid water that you saw, no drops of water that you saw? A. No.

Q. No actual drops of water you observed arising from the mat when you stepped upon it?

A. It was pretty soaking wet; the mat had been soaking water undoubtedly.

Q. Was there a squashing in the mat when you stepped on it? [83]

(Testimony of William F. James.)

A. No; the mat was on a surface through which the water could drain.

Q. Was there any water that you actually saw rising around your feet when stepping on the mat?

A. No.

Q. Don't you know, Doctor, that a mat of this kind slips less readily when wet than dry?

A. I can't help that, but it slipped.

Q. Don't you know it would slip less rapidly when wet than if it was dry?

A. No, I don't know that.

Q. Do you know the contrary?

A. No; I don't know that; I haven't made any special effort to test that.

Q. Now, Doctor, when you board vessels you wear glasses, as a rule, do you not?

A. Lately I have; it has only been the last year or so.

Q. Yes, dark or not?

A. I have a dark pair. No, I had none then, I know.

Q. But you have some? A. Now, I have some.

Q. That you use occasionally? A. Yes.

Q. Dark, ordinary eye-glasses?

A. Not colored glasses, if that is what you mean.

Q. Yellow? A. No, Stokes glasses.

Q. Stokes glasses; describe them, please.

A. It is a special glass which makes sunshine look as if it was just clouds, for instance.

(Testimony of William F. James.)

Q. To a person looking at the wearer of these glasses, do they appear to be as colored as other glasses? [84]

A. Quite, yes. I haven't them here, and they are also suited to my far sight, not for reading.

Q. They look darker than ordinary glasses, do they not?

A. Yes, quite out of the ordinary; they are known as read rest, not tinted glasses.

Q. Do you mean to say you were not wearing these dark glasses in August, 1917?

A. I did not have them then.

Q. Did you wear any dark glasses at all at that time?

A. No, I did not wear any dark glasses at that time.

Q. Not at the time of the boarding of this vessel?

A. No.

Q. Did you ask anybody on board that vessel when you stepped upon the mat to provide you with some means of stepping down to the deck from the top of the lumber pile? A. I did not.

Q. You observed the distance down? A. Yes.

Q. The depth? A. Yes.

Q. You did not ask for any assistance? A. No.

Q. But took it upon yourself to jump to the deck?

A. Yes.

Q. Now, just when was it that you observed that the edges of this door mat were ragged?

(Testimony of William F. James.)

A. I think that was when I was—I am not quite sure, I think when I was returning, going off the boat.

Q. Where was the door mat then?

A. I am not sure whether—well, I could not tell you whether [85] there or immediately after I was helped up, but I do remember remarking that the mat was ragged.

Q. Yes, I mean when did you observe that the edges were ragged?

A. I think when I was being led off to the captain's room; I am not positive of that.

Q. What was the position of the mat on the top of the pile of lumber when you observed the edges were ragged? A. I couldn't tell you.

Q. You couldn't tell?

A. No, I am not sure about that. I believe,—whether I saw it afterwards or when I stepped on it, I couldn't tell you.

Q. Are you prepared to say that this mat, which is not ragged and has no ragged edges, exhibit 1, is not the mat which was on that lumber pile at the time you stepped on it?

A. How can I say that? I am pretty sure it was a more ragged mat than that; that is practically a new one.

Q. But it might have been this mat after all?

A. There are thousands of mats practically the same.

Q. It might have been this mat after all?

(Testimony of William F. James.)

A. It might have been that mat after all.

Q. Very much like that except for the edges?

A. One like that.

Q. Now, Captain,—or Doctor, rather,—you knew this was a wet mat before you actually stepped on it?

A. I saw that it was wet.

Q. That knowledge of yours, or belief of yours, was confirmed when you first stepped to the middle of the mat, was it not? [86] A. Yes.

Q. And you knew when you stepped from the middle of the mat to the edge of the mat? A. Yes.

Q. You knew the pile of lumber was wet?

A. Yes.

Q. From your observation? A. Yes.

Q. Although there were not any drops of fluid water on the surface; that is correct, is it not?

A. Yes.

Q. You saw that the deck was wet? A. Yes.

Q. Was it a rainy morning?

A. Well, it may have rained before daylight, but it was not raining when I boarded.

Q. Was it clear when you boarded?

A. It was fairly clear.

Mr. OLSON.—Yes. Subject to the production of this witness later on in further testimony on other matters, I terminate my cross-examination now, reserving the right to cross-examine upon any matters produced later on. Of course, counsel have the right now to proceed with the redirect examination. Oh,

(Testimony of William F. James.)

before closing, I would like to ask one more question, if your Honor please.

Q. What kind of shoes or boots did you wear that morning?

A. Just similar like these I have on now.

Q. Tan shoes, ordinary leather soles? A. Yes.

Q. With heels about an inch high?

A. The same thing I have on now.

Q. That would be about right, wouldn't it, heels about an inch high? A. Yes.

Mr. OLSON.—Take the witness. [87]

Redirect Examination of WILLIAM F. JAMES.

Mr. VITOUSEK.—You say you had on the same shoes, or similar?

A. Similar to these; I don't know whether they are the same pair.

Q. Is that the uniform prescribed by the Government? A. Yes.

Q. Does it impede your movements at all?

A. None whatever.

Q. And I want to ask in regard to the—you have boarded many boats, you say? A. Yes.

Q. Ever had any trouble getting on board?

A. I have had an accident but one time when a rung of the Jacob's ladder broke. I didn't have an accident then, I had a good hold of the rope.

Q. Ever had any trouble on account of your physical ability?

A. None whatever; I usually pride myself on being

(Testimony of William F. James.)

able to go up a Jacob's ladder about as quickly as the next one.

Q. Was the mat fastened in any way?

Mr. OLSON.—It was lying flat without any particular fastening.

A. I didn't see that it was fastened.

Mr. VITOUSEK.—Do you think the captain had provided a safe way for you to get on board?

Mr. OLSON.—I object to that as calling for a conclusion.

The COURT.—Sustain the objection; that is a fact for the Court to pass on. [88]

Mr. VITOUSEK.—You testified, or in answer to a question, you said you could have stepped down from being on your knees. Was there any way of being able to step down from the deck and being on your knees, I mean, with your knees on the mat?

A. No, not without sitting on the planks.

Q. I believe I was wrong, but the question was asked you if you could have got down on your knees. If you were on your knees—

A. There was no step, no, no means of putting your foot anywhere from the top of the planks to the deck in between.

Mr. CATHCART.—Can I ask a question?

Mr. OLSON.—Go ahead.

Mr. CATHCART.—You answered a question of counsel, counsel said to you, if you got down on your knees couldn't you have stepped down from the mat

(Testimony of William F. James.)

on to the deck. How could you have done that? You said you couldn't. A. I couldn't have done that.

Q. So you didn't want to be understood when you answered yes to his question that if you got on your knees you could have stepped down to the deck?

A. No, it was too high for that.

Q. Well, you couldn't have done it anyway unless you were an acrobat of some kind? A. No.

Q. You could have sat on the edge and lowered yourself down? A. Yes.

Mr. CATHCART.—That is all. [89]

Recross-examination of WILLIAM F. JAMES.

Mr. OLSON.—How tall a man are you, Doctor?

A. How tall?

Q. Yes. A. I think about five feet six.

Q. Now, do you mean to say you could not have gotten down into a sitting position on that pile of boards and then stepped down to the deck perfectly safely?

Mr. CATHCART.—I object; it is not proper re-cross-examination. He said he could have lowered himself that way, but my question is directed that he could have gotten on his knees and then stepped down, which I say is impossible.

Mr. OLSON.—I will withdraw my question and let the witness go. That is all. [90]

Testimony of George Provo, for Libellee.

Direct examination of GEORGE PROVO, for libellee, sworn.

Mr. OLSON.—Your name is George Provo?

A. G. Provo; yes.

Q. What is your occupation?

A. Chief officer of the "Coolgardie."

Q. The "Coolgardie" being in Honolulu at the present time and the libellee in this suit?

A. Yes, sir.

Q. How long have you been the chief officer of this vessel? A. About ten months.

Q. You were the chief officer of this vessel when she made a call at Honolulu in August of 1917?

A. Yes, sir.

Q. About what time in the morning did she come off port and drop anchor?

A. About seven o'clock, I think.

Q. Somewhere in the early morning?

A. Yes, sir; I couldn't say within a few minutes.

Q. Have you observed Doctor James, who is here present in court, the witness just off the stand?

A. Yes, sir; I had the pleasure of visiting Doctor James yesterday or the day before.

Q. Yes, and did you see him when the "Coolgardie" called at Honolulu in August of 1917? [91]

A. Did I see him?

Q. Yes. A. Yes, sir.

Q. Was he the boarding surgeon, was he not a

(Testimony of George Provo.)

member of the Public Health Service?

A. Yes, sir.

Q. About what time was it that he came aboard?

A. Well, just about seven o'clock, or a little after seven.

Q. Yes; and where were you standing, or where were you on the vessel at the time Doctor James came over the rail?

A. Well, I was just walking from forward, and I was just about twenty feet from where the Doctor came aboard.

Q. And forward from that point?

A. From that point.

Q. Which side was it the Doctor came over?

A. Port side.

Q. Port side, from the Jacob's ladder, was it not?

A. Yes, sir; from the Jacob's ladder.

Q. Did you see him from that point from the time he came to the top of the rail until he got to the deck?

A. I saw him come up to the rail and I saw the Doctor make a step and then a kind of a jump, that's all I did see, and then I seen the Doctor fall down.

Q. Now, when you say you saw him make a step, where did he take the step to?

A. I couldn't say for certain. I thought he put his foot on the rail but whether he put his foot on the mat like that, as far as I could see,—you know a man who wasn't paying any particular attention to this sort of thing didn't expect this sort of thing to crop up

(Testimony of George Provo.)

and he don't take [92] notice of all these little items, but that is as far as I remember now, he did put his foot like that and made a bit of a jump; that's as far as I remember.

Q. He stepped on the mat and jumped immediately? A. He jumped at the same time.

Q. And in doing that he fell to the deck?

A. He fell.

Q. Now, what was the mat lying upon that he stepped on?

A. Oh, it was on a quantity of lumber we had stacked there.

Q. Loose boards, or secured in any way?

A. Well-secured boards.

Q. How? A. By lashings, by rope lashings.

Q. When was it they were first lashed?

A. Leaving Suva, just after leaving Suva.

Q. Suva, Fijii? A. Yes.

Q. Did they come loose during the voyage to Honolulu? A. No.

Q. Were they loose at the time the Doctor got aboard the vessel? A. No.

Q. How high is the rail at the point where the Doctor went over?

A. Oh, the rail, I suppose, is about four feet, or a little over four feet.

Q. From the deck? A. From the deck.

Q. Yes, how high was the top of the lumber pile from the top of the rail? A. Well, I should say—

(Testimony of George Provo.)

Q. How far, rather, from the top of the lumber pile to the top of the rail? [93]

A. From a foot to fifteen inches.

Q. And how far from the top of the lumber pile to the deck?

A. Well, I will say about two foot nine or three feet, that is, as near as I can judge. I didn't measure it or anything like that; it's only what I found; just put the idea from two foot six to three foot.

Q. What kind of a morning was this,—a stormy morning, clear morning or rainy morning?

A. Clear morning.

Q. Had there been any rain during the night while the vessel was coming to port?

A. No; as far as I can remember, I don't think there was any rain.

Q. Do you know whether or not the surface of the lumber pile was wet or dry?

A. I couldn't say really whether it was wet or dry.

Q. Describe the top of the lumber pile as to its width?

A. Well, just an ordinary lumber pile, you might say, from two foot six—two to three feet wide, just built up square, just made a nice pile so you could lash it. The "Coolgardie" is a ship you must have everything perfectly secure aboard her; no use talking about loose boards because if you had loose boards on the "Coolgardie" and she was out at sea she would start to roll. You can't have any loose boards knock-

(Testimony of George Provo.)

ing about; everything has to be properly secured.

Q. And was it properly secured?

A. As well as sailors could properly secure it. I have to [94] see to that sort of thing and if they are not properly secured I see that they are done.

Q. Now, on this particular morning, was this pile secure and lashed?

A. Oh, well, just the same as ever it was ever secured; never been moved.

Q. Now, how was the pile arranged at the after-end?

A. Well, as far as I can remember like—you see, it was close up to the bitts, there was a pair of bitts there and the pile of timber was stowed in such a manner that some would be a little longer than the others or a little bit shorter on account of the bitts, and bringing it up to the bitts, but that is as far as I can remember. Not altogether level; that wasn't perfectly level.

Q. That is at the end? A. At the end.

Q. How was the top surface of the pile along the length of the pile, level or not?

A. That was all level.

Q. No, then, speaking of these bitts, these are iron structures are they not, on the deck? A. Yes.

Q. How many at that point?

A. One bitt only. It is—

Q. One piece of iron but it comes up in two portions? A. Yes.

(Testimony of George Provo.)

Q. About how high is the top of the bitts?

A. I suppose about eighteen inches.

Q. About a foot and a half? [95]

A. A foot to eighteen inches, I couldn't say for certain, but somewhere around that.

Q. These bitts, Mr. Provo, are an iron structure, two piles, so to speak, they are combined with a piece of iron that goes from one to the other for the purpose of winding ropes around? A. Yes.

Q. And on top a flat surface? A. Yes.

Q. About what is the diameter of each one of these piles? A. Nine inches, eight or nine inches.

Q. Might it be more than that?

A. Might be more, might be a little bit less, but as far as I could judge, about eight or nine inches.

Q. Now, at the after-end of this pile of lumber, as I understand it, the lumber was piled up to the bitts, some coming up to the bitts, and you speak of some higgelty-piggelty arrangement. A. Yes.

Q. What about the end of that pile of lumber, what about walking down from the top to the deck?

A. Well, if a man wanted to make an easy job he could have walked that way and then on to the bitt and then on to the deck.

Q. How much of a step would it be?

A. It wouldn't be more than a step; the bitts would be the biggest step, about fifteen inches.

Q. Fifteen to eighteen inches?

A. Yes, fifteen to eighteen inches. [96]

Q. In other words, as I understand it, the pile of lumber was arranged with the after-end that a per-

(Testimony of George Provo.)

son would have had a natural easy step down to the deck.

A. Yes, sir. I don't say it was specially made for that but it so happened that the men when stowing it, stowed it that way, so that it made little bits of steps.

Q. Now, Mr. Provo, I will call your attention to exhibit 1 in this case, a door mat.

A. Yes?

Q. You spoke about a mat on the top of this pile of lumber. A. Yes.

Q. Was it anything like this exhibit 1?

A. Exactly the same. If it is not the same one it is exactly similar to it.

Q. Any ragged edges about that mat that you know of?

A. Very few ragged edges. We had an over-supply and I think that is one I had on the voyage. I think that was placed on the timber that morning.

Q. Were the decks wet?

A. The decks were wet because we had been washing down, as far as I remember.

Q. How often do you wash down the decks on the "Coolgardie"?

A. According to the weather. If we have bad weather we don't wash down, but if we don't have bad weather we wash down.

Q. Was there any flowing water around there that morning the doctor came aboard? A. No, none.

Q. Have you,—can you say, Mr. Provo, whether a mat like this Exhibit 1 here, slips more readily on

(Testimony of George Provo.)

a flat surface when [97] it is dry or less readily when it is dry than if it is wet?

Mr. CATHCART.—I am going to object; there is no proper foundation laid.

Mr. OLSON.—Mr. Provo, *how months* did you say you had been on the “Coolgardie.”—ten months?

A. Yes; I was on her before,—master for another ten months.

Q. During these two periods of time did you have mats like this same door mat on the ship?

A. No, I didn't have so many knocking around.

Q. Well, did you have any?

A. I didn't have as many as when I came back as mate; had a big supply on board.

Q. Have you had experience with mats like that on board vessels before? A. Any amount of it.

Q. Have you had any occasion to observe whether a mat like that will slide more readily when wet than when dry or dry than wet on the surface, have you had any occasion to observe that?

A. Well, that is a thing I never tried; I wouldn't like to say.

Q. Well, if you don't know, never mind. Now, then, this pile of lumber that was piled up there, Mr. Provo, that consisted of what kind of timbers?

A. Well, it was lumber, timber; you know it's boards of different variety, different sizes, but the top was nearly all one size. All the large boards placed on the bottom, and the fair-sized ones on top.

Q. Perfectly plain and smooth lumber or rough lumber? [98] A. Rough.

(Testimony of George Provo.)

Q. Used for what purpose? A. Dunnage.

Q. So that it would be rough surface or flat?

A. Yes, very rough.

Q. But a flat surface and rough? A. Yes.

Mr. OLSON.—That is all.

Cross-examination of GEORGE PROVO.

Mr. CATHCART.—Had you taken on that lumber at Suva?

A. No, no; we had it on board all the time.

Q. Was it cargo?

A. No, just lumber, just dunnage.

Q. Used for any and all purposes that might come up; is that it? A. That's it.

Q. Just rough northwest lumber; is that the idea?

A. Just rough lumber.

Q. And consisting of pieces of different sizes, various sizes? A. Beg pardon?

Q. Different lengths?

A. Oh, yes; not altogether one length, it was different lengths.

Q. It was many different lengths, is that the idea, some short and some long?

A. Not many short pieces.

Q. Mostly long? A. Yes.

Q. And the lumber was the same width, was it, or different widths? [99]

A. The lower part was one size and the upper part different sizes. The lower part was about two foot to eighteen inches, and the pieces stowed on top about seven inches by an inch.

Q. The widest part at the bottom? A. Yes.

(Testimony of George Provo.)

Q. And you say it was about three feet high, or two feet?

A. Well, from two foot nine to three feet; I couldn't say within an inch or two.

Q. And about how long was it?

A. Well, the stack itself?

Q. Yes.

A. Well, I dare say some of the pieces might have been fifteen feet long.

Q. Now, explain a little more fully, will you please, about these bitts? As I understand it, they are two iron pillars; is that the idea?

A. Yes; you know, that's the idea, just put there and—what will I say now—them bitts must be, I dare say, about three feet apart, yes, two like that only about three feet apart, two foot six to three feet.

Q. Do you call the pillar the bitt?

A. No, we call them bitts.

Q. And there would be a pillar coming up about eighteen inches? A. Yes.

Q. And about three feet wide, you say?

A. Not three feet, about two foot six or three feet, two foot six.

Q. And there would be another pillar coming up?

A. Yes.

Q. And do they run close to the bulwark or railing? [100]

A. They run, I suppose, about eighteen inches away from the bulwarks.

Q. I see. And they are joined on top by a flat

(Testimony of George Provo.)

bar, are they? A. Not joined on top.

Q. Not joined on top? A. No.

Q. And is there any iron that joins them at all, the pillars? A. Only the bottom.

Q. The bottom is a large piece of iron and then the pillars come up from it? A. That's it.

Q. And the large piece of iron runs parallel with the rail, does it not? A. Yes.

Q. And these pillars are up like this?

A. That's it.

Q. And how wide would you say this bitt is,—what would be the diameter of it? A. On top?

Q. Yes.

A. Well, I reckon about nine inches, I should think, as near as I can remember.

Q. And about eighteen inches from the deck to the top?

A. About eighteen inches, yes.

Q. And there was one of these bits, was there, down at the forward end of this pile or the after-end? A. The after-end.

Q. And you say the ends of the boards there were kind of higgelty-piggelty? A. Yes. [101]

Q. This one out a little bit and the other go in kind of beneath it; is that the idea?

A. That's it.

Q. You had been washing down the decks that morning?

A. Well, I wouldn't say for certain whether we did wash down that morning; I couldn't say for certain now, really.

(Testimony of George Provo.)

Q. You don't remember? A. No.

Q. You said the decks were wet?

A. Well, as far as I remember, I can't say whether they were wet or dry.

Q. And you wouldn't want to say now?

A. Well, I wouldn't like to swear to it; you know, it's a bit far back to remember, and I wouldn't say anything but what I thought was the truth, and if I can't remember I—

Q. I understand, so in answer to counsel's question when you said the decks were wet, that you had been washing down, you don't remember?

A. Well, we generally do wash down if it's a nice morning; if we did wash down the decks would be wet.

Q. Do you now remember what kind of a morning it was? A. A fine morning.

Q. You remember that?

A. Oh, yes, fine weather.

Q. So that you probably did wash down the decks?

A. I was on deck that morning from four to eight, so I would know what kind of weather it was.

Q. I see, and when you wash down the decks you use a hose, do you?

A. Yes, we use a hose and broom.

Q. Swing it around and come up with a broom, is that the idea? [102] A. Yes.

Q. And it has a pretty good stream at the end of it? A. No, it don't have no nozzle.

Q. Don't have any nozzle at all? A. No.

Q. Well, a pretty good stream comes out?

(Testimony of George Provo.)

A. Yes, a good stream, good force.

Q. Good force? A. Yes, sir.

Q. You don't stay around when they wash it down, do you? A. No, I stay on the bridge.

Q. The ordinary seamen attend to that, don't they? A. Yes, the seamen and the bos'n.

Q. As I understand it, you had been on the bridge from four o'clock; is that the idea?

A. I was on the bridge from four o'clock; yes.

Q. And about this time when the ship had dropped its anchor and the doctor was coming on board, you came down and was coming from,—going aft, is that it?

A. No, I had been up on the forecastle-head. I rounded the men up for the doctor. When I saw the doctor coming and the pilot aboard—when I saw the doctor coming I went and roused all the men out to come and line up for the doctor.

Q. And where was that?

A. The men were close up to where the doctor come on, just a few feet from him.

Q. On the same—this was on the port side?

A. Yes, the port side forward where the doctor come aboard.

Q. And you were about twenty feet away forward?

A. Just about the same where the men was, just coming aft.

Q. You routed all the men out of the forecastle bringing them [103] for the doctor to examine and coming forward and about twenty feet away

(Testimony of George Provo.)

when you saw him come up over the rail?

A. Yes, sir.

Q. And he came up on this Jacob's ladder?

A. Yes.

Q. And did he get up and stand up on the rail?

A. Now, I can't remember, all I remember—I can't remember how the doctor got up on the rail but I remember seeing him up, you see, just placing his foot, that's when I saw him, saw him placing his foot on the mat and give a bit of a jump. I couldn't say how he got up on the rail.

Q. It all happened in a very short time?

A. Just happened in a minute, you might say.

Q. The first thing you remember you saw the doctor on the rail stepping off on the mat and jumping and slip forward? A. Yes.

Q. These bits, are they flat on top, or round?

A. Well, they are not exactly flat; they are a little bit raised, just a little, slightly, just like that, might be—well, not as much as that, but more the shape of that, you see.

Q. A good deal like the posts of his Honor's bench? A. Yes, about nine inches; yes.

Q. And about the same roll?

A. Yes, about the same as that.

Q. You have used these boards for some purpose before reaching Suva or at Suva and there you were through with them so you lashed them up on the rail; is that the idea? A. Yes. [104]

Q. And they remained there ever since leaving Suva until you came to Honolulu?

(Testimony of George Provo.)

A. Remained there; yes.

Q. Your voyage was from where to where at that time?

A. From Suva to Honolulu and Frisco.

Mr. OLSON.—You mean the beginning of the voyage?

Mr. CATHCART.—No, I don't care about that.

Q. So that from the time of leaving Suva until you reached Honolulu those boards were lashed at the rail? A. That's it.

Q. What kind of weather did you have on the trip, all fine weather, or did you have some rough weather?

A. No; as far as I remember we didn't have extra fine weather; we had decent weather as far as I remember now.

Q. Didn't have any of this weather where if you had loose boards on there they would all get away, or it would fill the vessel up to the top of the rail with water?

A. We did not, but she is a terrible ship to roll and you must have everything well secure aboard that ship.

Q. Not a very good ship then?

A. Well, she rolls something awful.

Q. You don't remember whether you had any such weather as would bring a wave over on this dunnage, do you?

A. Well, we very often have that and don't take any notice. A big lump of a sea would come over and we wouldn't take notice of it.

(Testimony of George Provo.)

Q. You wouldn't take notice of a little thing like that? A. No.

Q. It has to be one of those great big seas that you would [105] take any notice of?

A. Yes, like we had this time.

Q. This pile of lumber, the larger pieces, the larger pieces in width were at the bottom? A. Yes.

Q. And as they went up these narrower pieces were put on? A. Yes.

Q. But piled so that it was straight, so that it would be square? The sides of the pile in towards the deck would be right straight up and down, eh, do you know what I mean?

A. Just a square pile of timber so you could lash it nice and comfortable.

Q. And at the top the boards being narrower of course more boards on top to make the width equal to the width on the bottom? A. Oh, yes.

Mr. CATHCART.—That is all.

Mr. OLSON.—That is all.

The COURT.—Half-past 1, Monday afternoon. If not possible to complete it then, we will hold a night session.

The further hearing of this cause was then continued to 1:30 P. M., March 11, 1918. [106]

[Title of Court and Cause.]

Honolulu, H. T., March 11, 1918, 1:30 P. M.

Testimony of Kristian Hansen, for Libellee.

Direct Examination of KRISTIAN HANSEN, for libellee, sworn.

Mr. OLSON.—What is your present occupation?

A. Second mate.

Q. Second mate of the steamship "Coolgardie"?

A. Yes, sir.

Q. The same steamship that is the subject of this suit? [107] A. Yes, sir.

Q. How long have you been at sea?

A. About eighteen years.

Q. How long have you held—you have second papers, have you? A. Yes, sir.

Q. How long have you had second mate papers?

A. About eighteen months.

Q. How long have you been on the "Coolgardie"?

A. Since last July.

Q. Since last July? A. Yes, sir.

Q. And when you became connected with the "Coolgardie," in what capacity were you employed?

A. Third mate, first.

Q. And when did you become second mate?

A. This trip, when we left Newcastle this trip.

Q. Yes. I will ask you if you were the third mate of the "Coolgardie" when she called at Honolulu on August 12, 1917? A. Yes, sir, I was.

Q. About what time of day did the "Coolgardie" come off the port of Honolulu at that time?

(Testimony of Kristian Hansen.)

A. She come off port at six-forty in the morning.

Q. At six-forty? A. Yes, sir.

Q. Yes, and were you on the deck of the vessel when the health officer boarded her? A. Yes, sir.

Q. About what time was it he boarded the vessel?

A. At seven o'clock in the morning.

Q. At seven o'clock in the morning; now, as to these exact times, you said six-forty and seven o'clock, do you remember [108] that now of your own memory or have you refreshed your memory from anything?

A. Well, as the third officer, I always got to put these things in the log. I put it in a book first and put it in the log-book afterwards, so I know the exact time.

Q. You know that from your own log?

A. Yes, sir.

Q. On what side of the vessel did Doctor James come aboard the vessel? A. On the port side.

Q. And by what means?

A. Jacob's ladder.

Q. A Jacob's ladder, and where was that Jacob's ladder hung?

A. On the port side, in the fore part of the bridge.

Q. Fore part of the bitts?

A. Fore part of the bridge.

Q. Fore part of the bridge, I see; that was on the after deck? A. No; on the forward deck.

Q. Forward deck I meant to have said.

A. Yes, on the forward deck.

Q. How high is the rail over which the—or to

(Testimony of Kristian Hansen.)

which the ladder was hung from the deck of the vessel? A. About four feet.

Mr. CATHCART.—Four feet?

A. Yes, a little over four feet, approximately four feet.

Mr. OLSON.—What kind of a deck is there?

A. Wooden deck.

Q. Is there more than one deck on that vessel forward? A. No.

Q. One deck? A. One deck.

Q. About how far forward of the bridge was the point where the [109] ladder was fastened to the rail?

A. About ten or twelve feet.

Q. I mistook your wording bridge for bitts, that recalls to my mind possibly there may have been some bitts there. Were there any bitts near the point where the ladder was hung? A. Yes.

Q. Fore or aft of that point?

A. On the after part.

Q. About how far aft?

A. About two or three feet—yes, about two or three feet, it wouldn't be over two feet, I will say two feet.

Q. How high are those bitts from the deck?

A. About eighteen inches from the deck.

Q. What are these bitts constructed of?

A. Iron.

Q. And they consist of two iron posts, do they?

A. Yes, sir.

(Testimony of Kristian Hansen.)

Q. For the purpose of putting ropes around?

A. Yes, sir.

Q. How thick in diameter would each one of these posts composing the bitts be?

A. Would be about seven inches.

Q. And on the top of these bitts are they round or flat? A. Perfectly flat.

Q. Perfectly flat?

A. Yes, except just at the over side where they are rounded off slightly, on the over side of it.

Q. At the over side, rounded off slightly?

A. Yes.

Q. But that would not extend any more than about a half an [110] inch, that's the correct idea?

A. Yes, that's correct.

Q. Otherwise it is perfectly flat on top?

A. Yes.

Q. At the time when Doctor James boarded the vessel was there anything on the deck next to the bulwarks? A. There was a stack of timber.

Q. A stack of timber; what kind of timber?

A. Well, dunnage timber.

Q. Dunnage?

A. Dunnage timber, mostly planks.

Q. About how large in length and width and thickness?

A. Well, some would be about eighteen feet long and some would be shorter, a bit shorter.

Q. A bit shorter? A. Yes.

(Testimony of Kristian Hansen.)

Q. How much shorter, the shortest?

A. I don't think any was more shorter than ten feet, nine or ten feet.

Q. And about how wide?

A. The planks would be about ten or eleven inches wide and about two and a half inches thick.

Q. Yes, and was there any of the lumber in that pile that was less thinner or less wide than that?

A. There was a few boards on top of the dunnage boards about six inches wide and about an inch thick.

Q. On the top? A. Yes.

Q. This pile of lumber, will you state whether or not it was secured in any way? [111]

A. Yes, it was well secured.

Q. In what manner?

A. By lashings right around it.

Q. Lashed to what?

A. To the stanchions in the bulwarks.

Q. Were any of the boards in this pile of lumber that morning when Doctor James came aboard, loose or unsecured? A. No.

Q. When were they lashed and secured in this way? A. The time we left Suva.

Q. The time you left Suva? A. Yes, sir.

Q. That was the port just before coming to Honolulu, was it not? A. That's the last port; yes.

Q. About how high was this pile of timber from the deck? A. About two foot six.

(Testimony of Kristian Hansen.)

Q. And about how wide from the bulwarks out toward the deck?

A. I should say it would be about the same width.

Q. About two and a half feet? A. Yes.

Q. Now, as to the top of this pile, will you describe that as to its condition, as to whether it was uneven or level? A. No, it was perfectly flat.

Q. And the side that went down to the deck, from the top down to the deck, how was that?

A. Straight up and down.

Q. These boards that were on top of this pile that you say was level, were they smooth boards or rough boards, and when I say that I mean were they plain lumber or rough lumber?

A. Rough lumber. [112]

Q. But level?

A. Yes, there was no dressed lumber in that stack.

Q. No dressed lumber in that stack at all?

A. No.

Q. The surface, while level, had a rough surface, like ordinary sawn boards?

A. Ordinary sawn boards.

Q. Now, how far did the after end of that pile of lumber extend toward the bridge?

A. It extended right up to the bitt, stacked right up, against the fore part of the bitt, because the lowest plank was right up against the bitt or the stand of the bitts where the bitts is standing on deck.

Q. Now, I will ask you whether or not, or rather, will you describe, just how that end of the pile of lumber was?

(Testimony of Kristian Hansen.)

A. Well, as far as I can remember the bitts was clear on the after-end—the timber went right up against the bitt, and it wouldn't be much higher than the bitt at that place; just a little bit higher than the bitt.

Q. You said, I think, that the lumber pile was about two and a half feet high, and the bitts about a foot and a half high? A. Yes.

Q. All right; if a person were to go down the pile of lumber from that end, would he have any difficulty in getting down?

Mr. CATHCART.—I object, incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

Mr. OLSON.—Withdraw the question; I will ask you to describe [113] how that pile of lumber was with regard to a person going up and down, what facilities there were at that end?

A. It would be perfectly safe, because there was no timber in the stack that would give way, it would be perfectly safe to go down that stack.

Q. Why?

A. Because the timber wouldn't give way. There was no timber,—if you stepped on the end of the planks it wouldn't tip down with you, so that you couldn't slip that way.

Q. And how far was the first step down from the top of the lumber pile down to the bitts?

A. Well, that would be only about six, or six or seven inches, or say nine inches for the most.

Q. I think you said the bitts were about a foot and

(Testimony of Kristian Hansen.)

a half. A. Yes, that's right.

Q. And the lumber about two feet and a half?

A. Yes.

Q. It would be about a foot then?

A. It could have been a foot.

Q. Down to the bitts? A. Yes.

Q. Was there anything in the way of the bitts to prevent a person stepping directly from the bitts down to the deck?

A. No, only the deck after the bitt.

Q. And how near to the rail were the bitts, or are the bitts, as they were at that time?

A. Well, they are only about a foot from the rail.

Q. Could a person hold on the rail while walking down that way? A. Yes. [114]

Q. Was there anything to interfere with a person's going down that way step by step from the top of the lumber pile to the bitts and from the bitts to the deck?

A. No, nothing to interfere with going down that way.

Q. Did you observe the pilot come aboard that morning?

A. I am not sure if I did observe it, because the pilot, I believe, come aboard when I was in my room that morning.

Q. He was aboard before the doctor came aboard though, was he? A. Yes.

Q. Was there anything on top of that pile of lumber when Doctor James came aboard? A. A mat.

Q. What kind of a mat?

(Testimony of Kristian Hansen.)

A. Ordinary door mat.

Q. I will call your attention to Claimant's Exhibit 1, and ask you to please take a look at that mat. I will ask you whether or not the mat that was on that pile of lumber was anything like that?

A. Exactly the same as that.

Q. Exactly the same as that?

A. Exactly the same.

Q. I wish you would take a look at this mat here, Mr. Hansen, come down and take a look at it.

A. Yes, sir.

Q. I want you to observe the edges of the mat; can you say whether or not the mat which was on the top of that pile of lumber that day was frayed or ragged or more uneven than the edge of this mat, Claimant's Exhibit 1?

A. No, it would be exactly the same as that mat.

Q. Have you seen this particular mat before?

A. Well, I expect I have, because I seen all the mats in the [115] ship. I wouldn't be sure, but I believe that is the same mat.

Q. You think this is the mat? A. Yes.

Q. Why do you think this is the mat?

A. Because we haven't got very many mats knocking about the deck, and I believe this is the only spare mat we got.

Q. Now, did you see this mat brought up to the courtroom last Friday morning? A. Friday?

Q. Yes, Friday morning. A. Yes.

Q. You saw to it that this mat was brought up here, did you not? A. Yes.

(Testimony of Kristian Hansen.)

Q. Therefore you know where this mat came from on the ship. A. Yes.

Q. And you say you believe this is the mat that was on the lumber pile that morning?

A. I believe it was the mat.

Q. At any rate it was like it?

A. Yes, just exactly like it.

Q. All right, sit down, Mr. Hansen; now, what kind of a morning was it when Doctor James came aboard the vessel, with reference to its being stormy, clear or fair?

A. Fine morning, fine weather.

Q. Was the vessel anchored as yet when Doctor James came aboard? A. Anchored.

Q. Was there any swell? A. No.

Q. Was the vessel rocking or lying quiet?

A. Quiet as I am sitting here now. [116]

Q. Had there been any rain during the night while the vessel was approaching the port of Honolulu?

A. As far as I remember, I don't believe it had.

Q. Had there been any rain the day preceding?

A. Well, that I couldn't say, it's so long time ago.

Q. So far as you remember now, had there been?

A. No, not as far as I remember.

Q. Were the decks wet or dry when the Doctor came aboard? A. The deck was wet.

Q. Why, or from what?

A. We had been washing down that morning.

Q. Now, Mr. Hansen, well, before I come to the next question I was about to ask, had the washing of the deck been completed before the doctor came

(Testimony of Kristian Hansen.)

aboard? A. Yes, sir.

Q. Now, will you please tell the Court about this washing down process, what do they first do when they wash down the deck, how were they washed down? A. With a hose.

Q. With a hose? A. Yes.

Q. The water is forced through a hose on to the deck? A. Yes.

Q. And then what is done?

A. Then we sweep the decks dry.

Q. Sweep the decks dry? A. Yes.

Q. Had the decks been swept dry when the doctor came aboard?

A. As far as I remember, they always sweep the decks dry after washing. [117]

Q. The washing had been completed though before the doctor came aboard? A. Yes.

Q. Now, when the washing down of the decks has been completed by forcing this water on the deck and then sweeping them dry, is there any flowing water left on the deck? A. No.

Q. Had the boards for the time being remained damp?

A. Oh, they remained damp for the time being.

Q. Which part of the vessel is always washed down first? A. The fore end.

Q. And this was the fore end of the vessel?

A. Yes.

Q. Where was this mat placed on that pile of lumber at the time Doctor James came aboard?

A. Right along the length of the Jacob's ladder.

(Testimony of Kristian Hansen.)

Q. Along the length of the deck ladder?

A. No, lengthwise the Jacob's ladder.

Q. Was it overhanging the lumber pile when he came aboard?

A. Not as far as I remember it wasn't overhanging, just about even with the edge of the timber.

Q. Now, where were you standing when you saw Doctor James come over the rail?

A. I was standing about eight feet in the fore part of the ladder on the deck.

Q. Anybody else there?

A. Yes, a lot of the crew was lined up ready for the Doctor in the fore rigging.

Q. On the fore deck? [118]

A. Yes, abreast of the fore rigging on the fore deck.

Q. You know Mr. Provo, do you? A. Yes, sir.

Q. He is the first officer, or chief officer, of the "Coolgardie." A. Yes, sir.

Q. Was he aboard there on that deck at the time?

A. Yes.

Q. Do you remember what other employees of the "Coolgardie" who are now here with the "Coolgardie" or in this Territory, who were up on the deck at that time?

A. Yes, there was two of the A. B.'s.

Q. Able seamen? A. Able seamen, yes.

Q. What are their names? A. Olson is one.

Q. Yes?

A. And Krumin is the other one, and Sinclair, the bos'n.

(Testimony of Kristian Hansen.)

Q. Sinclair the bos'n? A. Yes, sir.

Q. And who else?

A. And the chief steward, Mr. Patterson.

Q. And who else?

A. And Mr. Black, the wireless operator.

Q. Anybody else? How about Mr. Provo?

A. And Mr. Provo.

Mr. CATHCART.—He already said so.

Mr. OLSON.—And where was the Captain?

A. He was on the lower bridge.

Q. What is the captain's name? A. Thomsen.

Q. H. A. Thomsen, is it not?

A. Well, A. H.

Q. Well, it is either A. H., or H. A. Captain Thomsen? A. Yes.

Q. Same man that is here now?

A. Yes. [119]

Q. Now, as to the other members of the crew that were on the vessel at the time Doctor James came aboard, are they still on the "Coolgardie" or are they no longer members of the crew, those who were on deck that could see the accident at the time, are there any others besides those you have named that are still with the crew? A. No.

Q. All gone? A. All gone.

Q. Not here? A. No.

Q. Don't know where they are? A. No.

Q. In which direction were you looking when Doctor James came over the rail?

A. I was facing him when he came over the rail.

Q. Besides the pilot whom you *same* came on the

(Testimony of Kristian Hansen.)

vessel before the doctor, had any other person come on board the vessel that morning before Doctor James? A. No, no one.

Q. Did anybody else board the vessel after Doctor James?

A. Yes, two persons boarded the vessel after Doctor James.

Q. Do you know who they were?

A. Well, I presume it was the immigration officer and the custom-house officer.

Q. They were officials anyway? A. Yes.

Q. The customs officer and immigration officer as far as you observed. A. Yes.

Q. Did they come on before or after Doctor James? A. After Doctor James.

Q. Now, will you please describe just how Doctor James came [120] aboard the vessel after he came up to the rail?

A. Yes, he came up over the rail and stepped down on the timber with one foot—when you come up over the ladder you got to get one foot over the rail first, and he stepped down with one foot before the other foot and he—it appeared to me he made a jump down on the deck and he fell.

Q. Now you he stepped down on the timber?

A. Yes,—well, he stepped down on the mat.

Q. He stepped down on the mat, not on the timber itself? A. No, on the mat.

Q. Yes, and then he came down with the other foot and appeared to jump?

A. And came down with the other foot on the mat.

(Testimony of Kristian Hansen.)

Q. And appeared to jump? A. Yes.

Q. And fell? A. Yes.

Q. And that is the way you observed it?

A. Yes.

Q. Do you know, Mr. Hansen, whether or not that mat was wet or dry at that time?

A. Well, the mat would be damp.

Q. Why?

A. It had been washed out that morning as far as I know, and the mat was damp.

Q. How about the pile of lumber, was that wet or dry?

A. No, that pile of lumber wouldn't be wet as far as I could say.

Q. In your experience on board vessels, Mr. Hansen, have you had anything particularly to do with mats before? [121]

A. Yes, sir.

Q. During all the time you have been aboard ships, or a considerable portion of the time? A. Yes.

Q. Will you state whether or not a mat will slide or slip more readily and more easily when it is wet than dry?

Mr. CATHCART.—I object; that is not expert testimony, your Honor. I object on the grounds that *it* not a matter of expert testimony,—on the grounds that no foundation has been laid to show that he is an expert on mats.

Mr. OLSON.—Have you, Mr. Hensen, observed mats of this kind in a wet condition and also in a dry condition? A. Yes.

(Testimony of Kristian Hansen.)

Q. Have you had any occasion to observe whether mats will slip or slide more readily, mats of that character will slip or slide more readily, whether they are on a wet or a dry surface?

A. Yes, I have observed it.

Q. Now, in what condition will it slip more readily, when it is dry or when it is wet?

A. It would slip easier if it was dry.

Q. It would slip easier if it was dry. A. Yes.

Q. And less easily when wet? A. Yes, sir.

Q. Was there, as far as you observed, Mr. Hensen, anything that caused the doctor to stumble?

A. No.

Q. When you saw him as you supposed take this jump and fall [122] to the deck?

A. No, there was nothing to cause him to stumble.

Q. After the doctor fell to the deck did you observe the position of the mat on that pile of lumber?

A. No, I wouldn't say that I observed the position of the mat because I picked up the doctor.

Q. Did you help to pick him up or did you pick him up yourself?

A. I picked him up myself, I was the first man to pick Doctor James up.

Q. What is that?

A. I was the first man to pick Doctor James up.

Q. Yes. This is Doctor James, is it not, the man in court? A. Yes, that's Doctor James.

Q. Do you know whether or not Doctor James wore spectacles or glasses that morning?

A. He wore spectacles.

(Testimony of Kristian Hansen.)

Q. What kind of spectacles?

A. As far as I know it was a pair of smoked spectacles.

Q. Smoked spectacles? A. Yes.

Q. About how long did it take from the time he stepped over the rail until he landed on the deck, falling down?

A. Only a few seconds, four or five seconds at most.

Q. Now then, Mr. Hansen, when you talk about seconds, just note now, one—

Mr. CATHCART.—I am going to object to that, if the Court please—

Mr. OLSON.— —four seconds up to that time, I just want to know whether the four seconds I ticked there was about the length of time.

Mr. CATHCART.—He said four seconds to the best of his knowledge. [123] If he don't know what seconds are, that's another thing. I don't think you can time him.

The COURT.—I will permit it, go ahead.

Mr. OLSON.—Now then, just once more. I will give you four seconds from the watch—now—now—that is four seconds.

A. Yes.

Mr. CATHCART.—What kind of a watch have you got?

Mr. OLSON.—I will assume you will admit that my watch is all right.

Q. Now, Mr. Hansen, was there any portion of that mat, just before Doctor James stepped on it,

(Testimony of Kristian Hansen.)

which was overhanging the edge of the pile of lumber? A. No.

Q. Lying there perfectly even and flat?

A. Yes.

Q. Cloudy or clear?

A. Well, I couldn't say that.

Q. Well, from the standpoint of being able to see, was it light enough so that a person stepping over the rail could see clearly just what was before him?

A. Oh, yes.

Q. Perfectly clear in that respect?

A. Yes, perfectly clear that way.

Q. Ordinary daylight?

A. Ordinary daylight, yes.

Mr. OLSON.—Take the witness. [124]

Cross-examination of KRISTIAN HANSEN.

Mr. CATHCART.—When were you on watch—were you on watch that morning at that time?

A. It wasn't my watch on deck, but I got to go on deck when the ship arrives in port.

Q. What time did you come on deck?

A. Oh, about half-past six.

Q. Were they washing down the deck when you came on deck? A. Yes.

Q. Who was in charge of the washing down?

A. The bos'n.

Q. The *bosn't*, here now, is he? A. Yes, sir.

Q. Did you see him washing down this fore part of the deck? A. Yes.

Q. Where were you, near the bridge?

A. I was on the bridge coming into port.

(Testimony of Kristian Hansen.)

Q. And who else was on the bridge?

A. The captain.

Q. And did you notice them when they were washing or was your attention occupied otherwise?

A. Well, I didn't take much notice who was washing down but I know they were washing down the deck. What individual bos'n did the washing down I wouldn't be sure to say. Only two or three men, he is put off in the morning to take charge of washing down and washing the ship's deck from forward right aft.

Q. But you remember seeing them washing the deck that morning? [125]

A. Yes, I remember them washing down the deck that morning.

Q. About how far were you from this pile of lumber when you were on the bridge?

A. When I was on the bridge?

Q. Yes.

A. Well, it's about fifteen feet from the bridge down to the deck.

Q. Well, I mean from the distance aft, the bridge is aft from the pile of lumber? A. Beg pardon?

Q. The bridge is aft from the pile of lumber, isn't it? A. Yes.

Q. How far aft?

A. Ten or twelve feet in the after-part of the lumber.

Q. And who had charge of the deck then?

A. The captain.

Q. And did you see the—where were the mats, on

(Testimony of Kristian Hansen.)

the deck when they were washing down?

A. Well, that I couldn't say where the mat was when they were washing down, but I know the mat was placed on the timber after it was washed down.

Q. How many mats were on that deck?

A. Only one as far as I remember.

Q. And what was the mat there on the deck for?

A. The mat had been placed outside one of the rooms to step on going into the room.

Q. What room was that?

A. Well, it would be probably the chief officer's or else—

Q. Well, do you remember this mat—that this was the mat in [126] front of the chief officer's door?

A. Well, I wouldn't say it was placed in front of any particular room, but we usually have a mat outside of our doors.

Q. Outside of the door of each room?

A. Well, not always; sometimes we might have the mat inside. If it is wet, for instance, we would probably take the mat and put it inside to keep it dry, to wipe our feet on when we get inside the room.

Q. Are all of the rooms on the same deck that the pile of lumber was? A. Yes.

Q. And about how many mats were in use on that deck for that purpose, for putting in front of doors?

A. Well, I don't remember if I had a mat in my room at the time, I used to have a mat in my room, but if I had a room it would be inside.

Q. Well, were there a dozen mats around there either inside or outside of the rooms? A. No.

(Testimony of Kristian Hansen.)

Q. Six? A. No.

Q. Four?

A. Might have been four, there is four rooms on that side.

Q. And how many on the other side?

A. Four rooms on the other side.

Q. Any mats to those rooms on the other side?

A. I don't know, because I don't take much interest in the other side of the deck.

Q. Isn't it a matter of fact that *you in* front of the rooms, either inside or outside, so that you could wipe your feet [127] before going in the room, each person could? A. Yes.

Q. There was to be one for each room so that a man coming in could wipe his feet and clean them before going into the room?

A. Yes, but I am not sure whether there was a mat in the second officer's room, I didn't see a mat in the second officer's room, and I didn't see a mat in the wireless operator's room, which is on the same side.

Q. I see, but you wouldn't want to swear there was none there that morning? A. In the rooms?

Q. Yes.

A. No, I can't say, because I don't remember.

Q. I see. You saw this mat put up on the pile of lumber?

A. Well, I am not sure; I don't remember if I saw it, but I saw it lying there.

Q. Who put it up there, do you know?

A. I couldn't say who put it up there either.

Q. Why was it put up there?

(Testimony of Kristian Hansen.)

A. Put up there because the deck had been washed and the mat probably had been washed, and it was put up there to dry, and also put there for the men to step on when they come over the side, up the ladder.

Q. Now, was it put up to dry or for a man to step on when he came over the side?

A. I think more for a man to step on coming over the side.

Q. And then when did you first remember seeing that mat up [128] there, when you were on the bridge or when you came down on the deck and were waiting for the health officers to come on board, was that the first time you saw it?

A. Well, I wouldn't take much particular notice of the mat, but as far as I observed I saw Doctor James step on the mat and—

Q. Now that—do you want to say anything further?

A. Doctor James, I saw, step on the mat, but I don't remember whether I saw the mat before or not.

Q. But you do remember seeing him step on the mat? A. Yes.

Q. But you can't say whether you saw anyone do that before or not? A. No.

Q. Did you see it after the doctor stepped on it and jumped on to the deck?

A. Yes, I certainly saw the mat afterwards.

Q. Do you remember seeing it now? A. Yes.

Q. After he jumped to the deck?

A. Yes, I remember seeing the mat after that.

(Testimony of Kristian Hansen.)

Q. And where were you after you saw the mat, after the doctor jumped?

A. After the doctor fell down on the deck I picked him up in the first place. Well, I don't remember if I took much notice of the mat or not.

Q. That is what I want to see; you said on direct examination that you didn't take much notice of the mat because you were the one to pick the doctor up.

[129] A. Yes.

Q. So that you didn't notice the mat after the doctor jumped then, at all?

A. Not to take particularly much notice of it.

Q. No, and you couldn't state where it was when you picked the doctor up?

A. No, I couldn't state that, but I saw Doctor James' feet land on the mat and as far as I observed, the mat didn't shift under Doctor James' feet.

Q. You did not observe it shift?

A. No, I didn't observe it shift.

Q. It happened very quickly, didn't it?

A. It happened very quickly.

Q. You show us how the doctor came over that rail, stand up and show just how you showed before, just how he stepped on that mat.

A. Yes, he come over the rail like this and put one foot—he come up the ladder and put one foot over the rail and stepped down on the mat and got the other foot put on the mat and the next thing he was down on the deck.

Q. Now when he came up over the rail did he climb up so that his whole body was above the rail

(Testimony of Kristian Hansen.)

before he stepped over? A. No.

Q. No?

A. He climbed up level with the rail and when he was high enough on the ladder he simply put his foot over like this.

Q. Climbed up and then put his foot over like this? A. Yes. [130]

Q. He didn't stand up straight like you are standing?

A. Not then, he wouldn't have anything to hold on to.

Q. And did you measure that pile of lumber?

A. No, I didn't measure it.

Q. Oh, that is your best judgment, that it was two feet and a half high off the deck? A. Yes.

Q. And it was about how wide, did you say?

A. About the same width.

Q. About the said width? A. Yes.

Q. You didn't measure it at any time, either before or after the accident? A. No.

Q. And how long was it, the pile? A. Long?

Q. Yes, long, how long.

A. Some will be eighteen feet, and some shorter.

Q. Some shorter, eh?

A. Yes. None very short because we never keep very short pieces of timber. They are only in the road in a ship if there are any very short pieces.

Q. What did you have this timber for?

A. It was dunnage timber.

Q. What? A. Dunnage timber.

Q. I know, but what did you use it for?

(Testimony of Kristian Hansen.)

A. Put it up against the bulwarks when we—to keep coal, when we have coal on deck, to go in the scuppers and stop the water from running on deck, to make a water way.

Q. That is, you would have coal on deck as well as down below? [131] A. Bunker coals.

Q. And you would put these boards along so as to prevent the coal from sliding into the scuppers?

A. Yes, to make a water-way.

Q. Did you oversee the lashing of them at Suva?

A. No, I wouldn't say that, but I see the lumber every day and I know it was well lashed. If it hadn't been well lashed it would have been over the side.

Q. Why, did you have rough weather?

A. Oh, yes.

Q. Isn't it a matter of fact that you didn't pay any particular attention to this mat at all?

A. To the mat?

Q. Yes, that mat that was on the pile of lumber, isn't it a matter of fact that you didn't pay any attention to it?

A. Not a great deal of attention to it, but I know that I saw Doctor James step down on the mat.

Q. And how far were you from him when he stepped on the mat?

A. I was about eight feet away from him.

Q. You were about the closest to him?

A. I was absolutely the nearest person to him and facing him.

Q. And how wide is that mat? A. That mat?

(Testimony of Kristian Hansen.)

Q. Yes.

A. I should say slightly over two feet wide.

Q. What?

A. Oh, the width, the width of it is this way, isn't it?

Q. Well, we will call this the width and that the length.

A. Well, that would be about eighteen inches wide.

[132]

Q. And about how long?

A. Slightly over two feet, I should say.

Q. And if it is on wet boards, is it easier to slip on wet boards than on dry boards?

A. No, I should say it would stick better on wet.

Q. And if it should happen to be a little over the edge there, would'nt it be apt to slip? A. No.

Q. Have you ever noticed—

A. Well, that would be a very hard thing, I don't think a person's feet would be able to drag it over that pile of timber even if you had your feet on it, as far as my opinion goes.

Q. If it was a little over the edge there, wouldn't it be more apt to slip that way than if it was back from the edge?

A. It all depends how a person stepped on it.

Q. Well, if he got towards the front wouldn't it slip that way?

A. No, maybe, but Doctor James didn't step on the very end of it.

Q. You can swear to that?

A. I can swear to that.

(Testimony of Kristian Hansen.)

Q. How far were his feet from the edge of it?

A. I would say four or five inches from the edge of it.

Q. Will you swear to that?

A. Yes, sir, I will.

Q. Have you ever seen one of those—what do you call that mat,—do you know what the name of it is?

A. Coir mat, I think.

Q. And have you ever lived ashore?

A. Very little.

Q. You never had any experience with one of those mats on the [133] edge of some steps leading up to a doorway, have you, of a house?

A. No, I never had a house of my own, so I haven't taken much notice of it.

Q. Well, have you even been in a house where they had these things on the door step? A. Yes.

Q. Where there is a flight of steps down?

A. Yes.

Q. And haven't you noticed that when it works to the edge it is apt to slip and you come down with it?

A. I never slipped on one myself so I can't say.

Q. Well, now, this mat was placed there for the doctor to come and step on when he came aboard, wasn't it?

A. As far as I know it was placed there for persons to—who come over the vessel to come aboard.

Q. When was that Jacob's ladder put down?

A. That would be put down when the pilot come, when we come in.

Q. Where did you anchor?

(Testimony of Kristian Hansen.)

A. Just outside the river here, outside the harbor.

Q. Just outside the entrance to the harbor?

A. The entrance to the harbor, yes.

Q. No rolling at all? A. No.

Q. And from the top of that lumber down to the deck would then be about two and a half feet?

A. Yes.

Q. And there was nobody stationed up by that mat there, was there, to help anybody down? [134]

A. No.

Q. Was there anybody stationed there to direct anybody how to get down? A. No.

Q. Now, isn't it a matter of fact that the ordinary usual way for a person to come over the side would be to step on the mat and then jump down two and a half feet on to the deck, is that the usual way?

A. Well, if he had noticed he could have walked along and stepped on the deck.

Q. Yes, but wasn't that the way of ordinary men coming aboard that ship just to step on the mat and then jump down that two and a half feet?

A. No.

Q. Wouldn't that be the way that you would come aboard the ship?

A. Well, I don't know, I would have a look around to see where I would go down.

Q. So you wouldn't jump that two and a half feet until you looked around?

A. Yes, if I saw a mat lying there, sure, I wouldn't think it was placed for me to jump immediately down over the side, off the side of it, I would look

(Testimony of Kristian Hansen.)

around to see where it would be the best place for me to go down. Of course a young man like me, it wouldn't be much trouble to me to jump it down.

Q. But you would look around before you would jump that two and a half feet?

A. Certainly I would. [135]

Q. What is your nationality?

A. I was born in Norway.

Q. How high would two and a half feet be on this post, would you state about to there?

A. No, it wouldn't be that high.

Q. Here?

A. Yes, I should say that would be two and a half feet.

Q. Where my hand is, that in your judgment would be the height of the lumber?

A. Well, about that, or approximately that, I can't say within an inch or two.

Q. How many mats on board that ship now, about the same number that you had in August, 1917?

A. Well, I would say about the same number of mats as far as I remember.

Q. And did you pick out this mat yourself?

A. Yes.

Q. Where did you get it from this time?

A. From outside the chart-room.

Q. What?

A. Oh, this one I picked up from over the lower bridge this time.

Q. And you say you believe that is the same mat?

A. I believe that is the same mat.

(Testimony of Kristian Hansen.)

Q. And other mats, have you other mats there that are like it? A. All the same.

Q. Well, what is there distinct about this that would make you think it is the same mat? [136]

A. Because that is the only one I seen about the deck.

Q. Well, has there been a mat about the deck ever since August of 1917?

A. Yes, mostly. Sometimes they are inside, and sometimes outside the room. One of these mats will last for years the way we use them.

Q. I know, but the other mats then are similar mats, and why do you say this was the only one that was out on the deck, or did I misunderstand you?

A. Well, because now if we have a mat in our room, we will take it if the deck is dirty, if we stow in a lot of dirt, we will take the mats out sometimes and knock them out, hit them up against the bitt and clean them out that way, but I picked that off the deck, or off the lower bridge, it didn't seem to have any particular place on the lower bridge, only lying on the deck.

Q. When do you remember first seeing that mat,—was it Friday morning, when you came into port, since you have been here this time, Friday morning, did you see it Friday morning just before you came up here?

A. No, a couple of days before I saw it lying on the lower bridge there, a couple of days before last Friday.

Q. Who had had charge of these mats around

(Testimony of Kristian Hansen.)

there, the men on the deck, just the ordinary seamen placing them where they pleased, or how is that?

A. Well, it would be nobody in particular have charge of them, they will give them a wash now and then. If there is a mat placed outside of a door, if they are washing down they [137] will wash the mat and leave it on the deck to dry again.

Q. They do, eh? A. Yes.

Q. Has that mat been washed out lately, do you know?

A. No, we couldn't wash the deck over there.

Q. Couldn't wash the deck?

A. No, there's no water in drydock.

Q. No water in the drydock, eh? A. No.

Q. Is it dirty,—it's a dirty old mat, isn't it?

A. Yes, it's dirty now.

Q. Sure the doctor had dark-colored glasses or spectacles on that morning, eh?

A. As far as I remember he had smoked glasses on.

Q. Well, do you remember about it so that you can say whether or not he had?

A. Well, of course I can't swear to it, but we have been there since, and we didn't have Doctor James the second time we come back here again from Frisco, so if it isn't Doctor James who had the smoked glasses I couldn't swear to it, if it isn't Doctor James, it is the other doctor; I couldn't swear to it, but as far as I remember Doctor James had smoked glasses, that's as far as I can remember.

(Testimony of Kristian Hansen.)

It was a long time ago.

Q. Did this lumber consist of hard wood or what?

A. Soft wood.

Q. About where was this Jacob's ladder and the mat in reference to the pile of lumber, about the middle of the pile in its length?

A. No, it would be about three feet from the end.

[138]

Q. What?

A. About two or three feet from the end of the timber.

Q. From which end? A. From the after-end.

Q. About two or three feet from the after-end?

A. Yes.

Q. You say these bitts are flat on top? A. Yes.

Q. Not round on top like that top of that post on that desk? On his Honor's desk? A. No.

Q. And you think the rail was about four feet from the deck high? A. Yes.

Q. A scant four feet, you think fully four feet?

A. Yes, a full four feet, slightly over four feet.

Q. Scant? A. Slightly over four feet.

Q. Would it be then about eighteen inches above the pile of lumber, above the pile of lumber?

A. The rail would.

Q. The top of the rail would? A. Yes.

Mr. CATHCART.—That is all.

Redirect Examination of KRISTIAN HANSEN.

Mr. OLSON.—Mr. Hansen, you spoke of your possibly jumping [139] down there without any trouble, stating that you were a young man. How

(Testimony of Kristian Hansen.)

old are you? A. Thirty-three—thirty-two.

Mr. OLSON.—That is all.

The COURT.—Take a recess for ten minutes.

[140]

Testimony of John Sinclair, for Libellee.

Direct examination of JOHN SINCLAIR, for libellee, sworn.

Mr. OLSON.—What is your name?

A. John Sinclair.

Q. John or George? A. John.

Q. John Sinclair? A. Yes, sir.

Q. Mr. Sinclair, what occupation do you follow?

A. Bos'n.

Q. On what ship? A. The "Coolgardie."

Q. How long have you been following the sea?

A. For the last thirty years.

Q. How long have you been on the "Coolgardie"?

A. Over two years.

Q. Were you on the "Coolgardie" when she called at the port of Honolulu in August of 1917?

A. Yes, sir.

Q. Were you on board the "Coolgardie" the morning of the day when the "Coolgardie" came off the port of Honolulu in August, 1917, when Doctor James came aboard as the boarding health officer? A. Yes, sir.

Q. Where were you when Doctor James came aboard?

A. I was on the forward part of the fore deck.

Q. Did you actually see him come over the rail?

(Testimony of John Sinclair.)

A. No, sir.

Q. When did you first see him? [141]

A. After the chief officer helped him up to his feet.

Q. After he had fallen to the deck?

A. Yes, sir.

Q. You did not actually see him fall?

A. No, I didn't actually see him fall, but I seen him after he raised him up.

Q. Mr. Sinclair, what kind of a morning was it that morning when the doctor came aboard?

A. Fine weather, fine morning.

Q. Any sea? A. No.

Q. Was the "Coolgardie" lying still or was she rocking? A. No, she was practically still.

Q. Were the decks wet at the time the doctor came aboard? A. Yes, sir; the decks were damp.

Q. What had caused their being damp?

A. Being washed down that morning previous to the ship's arrival in port.

Q. Who was in charge of that? A. Me.

Q. How is that washing down of the decks, how does it take place, how is it done?

A. We generally start at the forward part of the deck and wash down aft.

Q. Yes, you wash down with what?

A. Brooms.

Q. Any water? A. Oh, yes.

Q. How do you get the water on the deck?

A. Hose.

Q. Yes, and after the water has been put on the deck with the hose and the brooms sweep it up, is

(Testimony of John Sinclair.)

there any water left flowing on the deck? [142]

A. There is bound to be a certain amount of damp on the decks after they are broomed down.

Q. Now, at the time Doctor James came aboard that morning how damp or wet was the deck where he came aboard?

A. Well, there was a little damp, I couldn't say, there wasn't a great deal of wet. They had been washed down as usual previous to the ship's arrival in port and broomed down in the usual manner.

Q. Do you remember the location of the ladder over which Doctor James came?

A. What we call the side ladder or Jacob's ladder sometimes.

Q. On what side of the vessel was it?

A. On the port side, sir.

Q. Forward or aft?

A. On the forward part of the bridge, about ten feet on the forward part of the bridge.

Q. Do you remember a pile of lumber that was piled next to the bulwarks there immediately opposite where the ladder was placed? A. Yes, sir.

Q. When was that pile of lumber piled there?

A. Before the ship arrived.

Q. Where?

A. Before the ship arrived in Honolulu.

Q. I know, but where did you put it there?

A. We were at sea when it was put there, sir, the ship was on her passage.

Q. I know, but what port had you left, or before coming to what port? [143]

(Testimony of John Sinclair.)

A. Newcastle.

Q. Piled it up there at Newcastle?

A. No, after we left Newcastle.

Q. Did you see that lumber actually piled there yourself? A. Yes, sir.

Q. When it was being piled?

A. Yes, I was there when it was being piled, sir.

Q. How was it piled?

A. It was piled up against the bulwarks.

Q. What kind of timber was it?

A. We call it rough lumber, consisting of two-inch boards and some one-inch boards.

Q. Rough lumber? A. Yes, sir.

Q. How long would those pieces of lumber be?

A. Well, various lengths, anything from ten to twenty feet.

Q. These two-inch boards, about how wide would they be? A. About twelve inches.

Q. And the smaller boards, the one-inch boards, about how wide?

A. The smaller boards would be about ten—about six inches wide.

Q. Was there more of one than the other, and if so, which?

A. It consisted mostly of the larger sized timber.

Q. I see, about how high was this lumber piled from the deck?

A. About from two and a half to three feet.

Q. How high is the rail from the deck?

A. The top of the rail would be four feet.

Q. And about how wide from the bulwarks out

(Testimony of John Sinclair.)

toward the deck was this pile of lumber? [144]

A. About two and a half feet.

Q. Was the top of the lumber pile even or uneven?

A. It was level on top.

Q. Were the timbers composing this pile secured or unsecured? A. No, it was secured, lashed.

Q. Secured and lashed? A. Yes, sir.

Q. At the time Doctor James came aboard were they lashed and secure, or not?

A. Yes, they were secure.

Q. A person stepping on that lumber would the boards be loose or would it be solid, the top?

A. No, it wasn't loose.

Q. You said you did not see Doctor James until he was being picked up from the deck, I think.

A. No, I didn't see him come aboard.

Q. You were forward?

A. I was forward, calling the men aft.

Q. During that night while the "Coolgardie" was coming to Honolulu, had there been any rain?

A. No, sir.

Q. Fine weather? A. Fine weather.

Q. After the decks were washed down at the time the doctor came aboard that vessel, will you state whether or not that pile of lumber was wet or dry?

A. Well, the lumber was dry.

Q. These boards that were on the top of this lumber, were they smooth plain or rough lumber?

A. Well, it was rough lumber, no dressed wood, it was all rough lumber. [145]

Q. But level? A. Yes, sir.

(Testimony of John Sinclair.)

Q. Was there anything on the top of this pile of lumber? A. There was a mat.

Q. What kind of a mat? A. A door mat.

Q. I will call your attention to Plaintiff's Exhibit 1, this mat here, it is already in evidence, and I will ask you whether or not that mat was anything like this. A. Yes, sir, a mat of that class.

Q. As far as you remember, was there any difference between the mat on that lumber from this?

A. No.

Q. Same kind? A. Same class of mat.

Q. Where was that mat placed on the top of the lumber with reference to the place where the ladder was placed?

A. It was placed on top of the lumber across there where the ladder was.

Q. By that you mean directly in line with the ladder? A. Yes, sir.

Q. Was the mat wet or dry?

A. The mat was dry as far as I know.

Q. So far as you know? A. Yes, sir.

Q. Did you examine it to see whether it was dry, or wet?

A. No, I seen it on top of the wood.

Q. Was it lying entirely on the top of the timber or hanging over the timber pile?

A. No, flat on top of the lumber.

Q. Did you observe the mat after Doctor James had fallen on to the deck? [146]

A. Yes, sir, the mat was still there.

Q. Did you observe then whether it was still lying

(Testimony of John Sinclair.)

on the top of the lumber or partially hanging over or hanging over at all?

A. No, it was still where it was. I didn't see that it had shifted any or not.

Q. Did you take any particular note of it?

A. No, I didn't examine the mat.

Q. Do you remember how the lumber pile was lashed, as you say it was, how it was arranged at the after-end?

A. Well, the after-end, some of the lumber was longer than the others, you see, reaching further out than the other ones. The after-end of the lumber was not perpendicular, it was further out than the others.

Q. Do you know where the bitts are on the forward deck, port side? A. Yes, sir.

Q. Where were they with reference to this lumber pile?

A. They were at the after-end of the lumber.

Q. How near to the lumber pile?

A. The bitts were close to the after part of the lumber.

Q. Can you state whether or not at the after-end of the lumber pile there was any means of going down from the top of the lumber pile to the deck?

A. Step on to the bitts.

Q. By stepping on to the bitts? A. Yes, sir.

Q. How high do the bitts stand from the top of the deck, from the deck to the top of the bitts?

[147]

A. About fifteen inches.

(Testimony of John Sinclair.)

Q. The bitts are iron, are they not?

A. Yes, sir.

Q. Composed of two iron posts? A. Yes, sir.

Q. About how large in diameter would you say the top of each one of these posts forming the bitts, is? A. About eleven or twelve inches.

Q. Flat, or round, or uneven?

A. No, flat on top.

Q. Then, as I understand it, a person could have stepped from the top of the lumber pile to the bitts and from thence down to the deck? A. Yes, sir.

Q. In the form of steps? A. Yes, sir.

Q. How far away from the side of the bulwarks are these bitts? A. Only about a few inches off.

Q. Couldn't a person hold on to the rail in walking down these steps, these natural steps you have spoken of, could you hold on to the rail on the side?

A. Yes, you could easily reach the rail when stepping on the bitt.

Q. So the rail being four feet high you could hold on to that the whole way down?

A. Yes, sir.

Mr. OLSON.—That's all; take the witness.

Cross-examination of JOHN SINCLAIR.

Mr. CATHCART.—As I understand it, you step from the top of the lumber on to the bitt. [148]

A. Sir?

Q. You could step from the top of the lumber pile on to the bitt. A. On to the bitts; yes, sir.

Q. And the top of the lumber pile would be about—would it be two feet higher than the bitt?

(Testimony of John Sinclair.)

A. The top of the lumber?

Q. Yes. A. From the deck?

Q. No, from the top of the bitt.

A. No, it would be about perhaps two feet above the top of the bitts.

Q. About two feet above the top of the bitts, the top of the lumber? A. Yes, sir.

Q. And the top of the lumber would be about a foot or so lower than the top of the rail?

A. Yes, twelve or fifteen inches lower than the rail, sir.

Q. If you step down from the top of that lumber on to the bitt you would have to go away down in order to hold the top of the rail, wouldn't you?

A. Yes, you would.

Q. You would have to lean clear over to get down, like this, to step on the bitt and hold on the rail?

A. That is not necessary to hold on the rail coming aboard that way.

Q. But in order to hold on to the rail you would have to stoop clear down, wouldn't you?

A. Yes, if you wanted to get a hand on the rail you would.

Mr. OLSON.—Whether in stepping to the bitts or the rail, you [149] would have to stoop down to get to the rail.

Mr. CATHCART.—From the top of the pile of lumber if you would want to hold on the rail which the witness says is not necessary to stoop down to it because it is only about a foot higher than the top of the lumber, isn't it? A. Yes, sir.

(Testimony of John Sinclair.)

Q. This represents a bitt, does it?

A. Yes, that represents a bitt.

Q. And this is about the relative height of the rail? A. Yes, sir.

Q. This shows the bulwark or rail and the bitt. You are looking now— A. These the bitts here.

Q. Oh, this represents the bitt when you look towards the rail, isn't it?

A. The bitt stands fore and aft like that, you don't see the one part of the bitt, you see both parts.

Q. But if you only saw one part of it that would be the relative height of the bitt to the top of the rail.

Mr. CATHCART.—I want to introduce this in evidence as Libellant's Exhibit "A."

Q. You say there was an ordinary door mat on top of this pile of lumber right where the Jacob's ladder came up to the rail? A. Yes, sir.

Q. Placed there for persons who come up the ladder to step on?

A. Yes, it was put there for to step on.

Q. Put there to step on? A. Yes, sir.

Q. What was the idea of putting it there for them to step on?

A. Well, it was put there to step on to prevent them from [150] slipping on the wood.

Q. I see. The wood then was slippery, was it?

A. No, I couldn't say it was slippery.

Q. Was it fastened, was it secured?

A. Yes.

Q. How was it secured to the pile of lumber?

(Testimony of John Sinclair.)

A. Was the wood secured?

Q. The mat, was the mat secured to the lumber?

A. It was lying on the top of the lumber.

Q. Yes, and was it fastened?

A. No, it wasn't fastened; it wasn't nailed down.

Q. That lumber had been piled up there at the bulwarks and secured ever since you left Suva, is that right? A. Yes.

Q. Did you have rough weather at all coming from Suva to Honolulu?

A. Not what we call rough weather, moderate breeze.

Q. The "Coolgardie" rolls a good deal?

A. Oh, yes, she does.

Q. Ship seas over there?

A. She rolls all right.

Q. And ships seas over there?

A. Yes, very often.

Q. So that a good deal of sea water came over on this pile of lumber from the time you left Suva to the time you got to Honolulu?

A. Well, I couldn't say that because we didn't have very bad weather in coming.

Q. Well, you did have some?

A. Yes, there may have been occasional spray coming but we didn't encounter bad weather at that time. [151]

Q. You did not, eh? A. No, sir.

Q. You remember the trip, do you?

A. Yes, sir.

Q. Do you know who put that mat there?

(Testimony of John Sinclair.)

A. No, sir, I do not.

Q. Had you had charge of the wetting down of the deck that morning? A. Yes, sir.

Q. Well, did you look after it yourself or let the men handle it?

A. No, I washed down myself, I generally use the hose myself.

Q. You hold the hose yourself, eh?

A. Yes, sir.

Q. Do you know where this mat came from that was on top of that lumber?

A. No, I do not.

Q. Was there a mat for each room up on that deck? A. Oh, yes, a mat at each door.

Q. And was this one of the mats that had been at one of the doors?

A. Yes, I expect it had been.

Q. You did not take any particular notice of that mat, did you?

A. No, it laid there, I seen it on top of the lumber, but I didn't see it put there.

Mr. CATHCART.—That is all.

Mr. OLSON.—That is all. [152]

Testimony of Clifford Black, for Libellee.

Direct examination of CLIFFORD BLACK, for libellee, sworn.

Mr. OLSON.—What is your name?

A. Clifford Black.

Q. How old are you, Mr. Black?

A. Twenty-two.

(Testimony of Clifford Black.)

Q. And what is your occupation?

A. Wireless operator on board the S. S. "Coolgardie."

Q. How long have you been on the "Coolgardie"?

A. I signed on last July, 1917.

Q. Were you on the "Coolgardie" when she called at Honolulu, the port of Honolulu, on August 12th, 1917? A. I was.

Q. Do you remember the boarding of that vessel by the United States Health Officer, Doctor James, that morning? A. I do.

Q. About what time in the morning did the "Coolgardie" come off port that morning?

A. Oh, about half-past six or seven o'clock.

Q. About what time did Doctor James come aboard?

A. Not very long after we got there, about seven o'clock I should say.

Q. Did you see Doctor James come over the rail?

A. I did not.

Q. Where were you at the time he came over the rail?

A. I was in my room, or just a little aft, which was not very far from the Jacob's ladder.

Q. You did not see him actually fall in coming over the rail [153] or in descending to the deck?

A. No, but I saw a disturbance and walked forward, and when I got there they were picking him up and taking him away.

Q. What was the condition of the deck that morning, as you remember it?

(Testimony of Clifford Black.)

A. I would say that the deck was slightly damp on account of washing down.

Q. How often do they wash down the decks?

A. Well, every morning.

Q. And about what time of day do they wash down the decks as a rule?

A. Well, as soon as the men go to work, either six or seven.

Q. But approaching port, what time do they usually wash down, very early in the morning like this particular morning?

Mr. CATHCART.—I object to that as immaterial.

Mr. OLSON.—Withdraw it.

Q. Did you observe which side of the vessel it was that the ladder was placed for the boarding officers? A. It was on the port side.

Q. Forward or aft? A. Forward.

Q. How near to the bridge structure?

A. Oh, it would be about ten or twelve feet.

Q. Was there anything inside of the rail on the deck opposite the place where the doctor came aboard where the ladder was?

A. Yes, there was some timber.

Q. Well, how was that timber piled?

A. It was a square pile, lashed to the side of the ship.

Q. Do you remember where it was, where that was piled and [154] lashed, at what point on the voyage, I mean?

A. I couldn't say; I don't remember.

Q. Had it been lashed before this particular morn-

(Testimony of Clifford Black.)

ing of your arrival at Honolulu?

A. It had been there for some considerable time, that is, for a couple of weeks, or a week or two, I don't remember, but I remember having seen it there for a long time. I don't know whether it was there after we left Sydney or Suva, but one of those two ports.

Q. Now, was it secure or unsecure on this particular morning? A. It was secure.

Q. By lashings, I think you said?

A. By lashings, yes.

Q. About how high was this pile?

A. Of timber?

Q. The timber pile, yes.

A. About two feet six inches.

Q. How high is the rail from the deck?

A. About four feet, I should say.

Q. About how long was that pile, the lengths of the timbers that composed the pile?

A. Oh, approximately eighteen feet.

Q. And about how wide from the bulwarks out toward the deck, at the top?

A. Oh, just about two and a half feet, a square pile it was.

Q. Was the top level or uneven? A. Level.

Q. Was the timber planed and dressed timber, or was it rough timber?

A. Oh, it was rough timber.

Q. On this particular morning that Doctor James came aboard [155] the vessel, did you observe anything on the top of that pile of lumber?

(Testimony of Clifford Black.)

A. There was a mat on top of the lumber opposite the Jacob's ladder.

Q. What kind of a mat?

A. Well, a mat similar to that one on the table.

Q. You are referring now, are you, to this mat which I am now touching? A. Yes.

Q. Referring to Plaintiff's Exhibit 1, would you say it was the same kind of a mat?

A. Yes, a similar mat.

Q. A fibre mat like that? A. Yes.

Q. And as big as this? A. Yes.

Q. And about the same in its general characteristics? A. Yes.

Q. Was that lying entirely on the pile of lumber or was it partially hanging over the pile of lumber?

A. It was lying on the pile of lumber, it wasn't projecting at all.

Q. Do you know whether or not the pile of lumber, or did you observe whether or not the pile of lumber that morning at the time Doctor James came aboard, was wet or dry?

A. Well, I should say that it was dry.

Q. Had there been any rain that night or the day preceding? A. Not that I remember.

Q. Any rough weather? A. No.

Q. What kind of a morning was this when the ship anchored off [156] port and Doctor James came aboard?

A. It was a clear morning, fine morning.

Q. Any swell? A. No.

Q. How was the vessel, lying still or rocking?

(Testimony of Clifford Black.)

A. Lying still in calm weather.

Q. Was it light or dark or semi-dark?

A. Well, it was light.

Q. Full daylight? A. Full daylight, yes.

Q. And a clear day, I think you said?

A. Yes.

Q. Do you remember particularly how the lumber was piled in any other respect? How was it piled at the after-end, if you remember, that is, if you do remember?

A. Oh, it wasn't level at the ends, a few pieces were projecting on account of the timber not being of equal lengths.

Q. That is as much as you remember about it?

A. Yes, I don't remember anything very definite about it.

Q. Did you see the pilot come aboard that morning? A. No, I did not.

Q. Did you see anyone else come aboard after the doctor came aboard? A. Oh, yes.

Q. Who came aboard?

A. Several customs officials, and I think a man from the Inter-Island Company.

Q. You think there was a man from the Inter-Island? A. Yes.

Q. But there were some customs officials? [157]

A. Yes, and an agent from the Inter-Island Company.

Q. That is as you remember it now? A. Yes.

Q. Would this be incorrect, that there was a customs officer and an immigration officer and possibly

(Testimony of Clifford Black.)

an Inter-Island official,—what I am getting at is this—

Mr. CATHCART.—I object, if the Court please,—

A. I can't distinguish between customs officials and immigration officers, but I know two officers came aboard and I took them to be customs officials or something after that respect, and I know the agent of the Inter-Island Company, he also came on board because I was there when they came on board after the doctor was taken away.

Mr. OLSON.—Who came first?

A. I presume the doctor was the first on board.

Q. Well, as you observed it I mean, did the men you observed come on board before or after the doctor? A. After the doctor.

Mr. OLSON.—That is all.

Cross-examination of CLIFFORD BLACK.

Mr. CATHCART.—You saw this mat on top of the pile of lumber, did you?

A. I did.

Q. And do you know why it was placed there?

A. Well, I should say that it was placed there for the—on account of coming on board, it was put opposite the Jacob's [158] ladder on the pile of lumber, and I should say it was put there for that express purpose.

Q. So that anybody coming on board could step on it?

A. So that anybody coming on board could step on it; yes.

Q. I see.

(Testimony of Clifford Black.)

A. No other reason why it should be on top of the lumber pile at all.

Q. Why should they put a mat there for persons to step on, would the boards be slippery?

A. No.

Q. Well, was there any reason why they should put a mat there for persons to step on?

A. Well, for the same reason, I suppose, for putting a mat by a door or on a veranda.

Q. So you could wipe your feet on it? A. Yes.

Q. A sort of a welcome business, that's it, is it?

A. Yes, that's it.

Q. You didn't pay any particular attention to it?

A. I noticed it, but I paid no particular attention to it.

Q. Outside of the line of your duties, the piling of the lumber and everything else, wasn't it?

A. Well, as far as putting the mat there and the lumber, that is out of my work, but I noticed it as well as anyone else.

Q. Do you know who put it there? A. No.

Q. Did you see it there before you saw this disturbance and went up?

A. I saw it there when I went up.

Q. The first time you had seen it? A. Yes.

[159]

Q. Now, were one of these customs officials or immigration officials—didn't they follow right up after the doctor, and weren't they there when you got there, on board the boat?

A. They were coming over the side as I got up.

(Testimony of Clifford Black.)

Q. Did you stay there or help the doctor or anything?

A. No, I stayed there and I saw the doctor picked up and I saw him led away up to the chart-room.

Q. You didn't go with him? A. No.

Q. Have you any clear recollection of what kind of a morning it was?

A. Yes, I remember it was a fine morning.

Q. There was no swell, you say? A. No.

Q. No swell, the vessel didn't roll any at all?

A. No, she was lying there, in calm weather, calm water.

Q. What kind of a trip had you had from Suva?

A. Well, it had been rough at times and calm other times.

Q. You touched at Newcastle? A. Yes.

Q. Touch New Zealand? A. No.

Q. Newcastle to Honolulu? A. Yes.

Q. Stop at Suva? A. Yes.

Q. That is the only port you stopped at before you got to Honolulu? A. Yes.

Q. Well, hadn't you any rough weather after leaving Newcastle?

A. 'Oh, yes; we had very rough weather.

Q. The "Coolgardie" rolls a great deal, doesn't it? A. In rough weather.

Q. Well, is she what you would call a rolling boat, or is she [160] pretty steady?

A. Well, every boat rocks in rough weather.

Q. Yes, but some roll more than others, don't they? A. Yes.

(Testimony of Clifford Black.)

Q. Well, is she one of the boats that you would call a steady boat, or one that rolls more than usual?

A. Well, it all depends on the cargo in them, how they are loaded how she rolls.

Q. What cargo was she carrying at that time?

A. Wheat.

Q. Wheat? A. And copra.

Q. You remember the cargo, that was in August, 1917, wheat and copra? A. Yes.

Q. How long have you been at sea?

A. I have been at sea since August, 1916.

Mr. CATHCART.—That is all.

Mr. OLSON.—That is all. [161]

Testimony of Charles Patterson, for Libellee.

Direct examination of CHARLES PATTERSON, for libellee, sworn.

Mr. OLSON.—What is your name?

A. Charles Patterson.

Q. What is your occupation?

A. Chief steward, sir.

Q. Aboard some vessel?

A. Aboard the S. S. "Coolgardie," sir.

Q. The "Coolgardie" now in port?

A. At the present time; yes, sir.

Q. How long have you been at sea, Mr. Patterson?

A. Well, about thirty-one years, sir.

Q. And how long have you been aboard the "Coolgardie"?

A. Nearly two years, sir.

Q. And you have been chief steward during that time?

A. All the time, sir.

(Testimony of Charles Patterson.)

Q. Were you on the "Coolgardie" when she called at this port in August, August 12th, 1917?

A. Yes, sir.

Q. At the port of Honolulu? A. Yes, sir.

Q. What time of morning was it that she came off the port?

A. Oh, early in the morning, sir, about daylight, between six and seven.

Q. Were you on the deck of the vessel when the United States health boarding officer came aboard?

A. Yes, sir.

Q. Doctor James? A. Yes, sir. [162]

Q. What side of the vessel did he come over?

A. On the port side, sir.

Q. How did he get to the top of the rail?

A. By the Jacob's ladder.

Q. And where was that Jacob's ladder placed with reference to the bridge, forward or aft?

A. Fore part of the bridge, sir.

Q. About how far away?

A. I didn't judge much about the distance; about ten or twelve feet perhaps; something like that.

Q. How high would you say the rail at that point was from the deck? A. From the deck?

Q. Yes.

A. Between four and five feet, I should say, roughly.

Q. Was there anything lying on the deck next to the rail or bulwarks on which the rail was, opposite the Jacob's ladder?

A. There was a pile of lumber, sir, yes, sir.

(Testimony of Charles Patterson.)

Q. What kind of lumber?

A. Oh, just the ordinary—I suppose it was dressed, I don't know what you would call it, ordinary timber.

Q. Rough lumber?

A. I suppose you would call it rough; yes, sir.

Q. Loose boards or secured boards?

A. Perfectly secure, sir.

Q. How was it secured? A. Lashed, sir.

Q. How long had it been there? [163]

A. Well, it had been there some considerable time to my knowledge, practically since we left Suva, I should say.

Q. About how high was that pile of lumber?

A. How high, sir?

Q. Yes, from the deck how high was the pile?

A. Anything up to about two feet.

Q. About half of the distance up to the top of the rail?

A. I think it was, from the rail to the timber.

Q. No, was it about half the distance from the deck up to the top of the rail, you said it was two feet and said the rail was somewhere about four feet.

Q. Yes, just about equal distance, I should say, sir.

Q. That is as you remember it?

A. Yes, sir; that's as I remember it.

Q. And were there any loose boards on top?

A. None whatever, sir.

Q. How was the top of this timber pile, level or uneven? A. Level, sir.

(Testimony of Charles Patterson.)

Q. And was there anything on top of this lumber pile when the doctor came aboard?

A. Yes, sir, a mat.

Q. What kind of a mat? A. A Coir mat.

Q. I will call your attention to Claimant's Exhibit 1, this mat here placed in evidence, was it anything like that mat?

A. Very similar, sir, and about the same size.

Q. About the same size? A. Exactly.

Q. And the same character of mat?

A. Exactly, sir.

Q. And the same fibre as this?

A. Exactly the same.

Q. Where were you standing when the doctor came aboard? [164]

A. Just at the fore part of the chief officer's cabin.

Q. The fore part of the chief officer's cabin?

A. Yes, sir.

Q. Is that forward or aft of the point where the Jacob's ladder was?

A. Before you get to the ladder.

Q. Aft?

A. The after part of the ladder; yes, sir.

Q. With reference to the vessel you were aft of the— A. Of the Jacob's ladder; yes, sir.

Q. Facing or not facing the doctor?

A. Facing the doctor when he came on board.

Q. Where did he step to, from the rail?

A. On to the mat, sir.

Q. On the mat? A. Yes, sir.

Q. Then what did he do?

(Testimony of Charles Patterson.)

A. He hesitated, and then he jumped.

Q. Then what happened?

A. He fell,—fell on his hands.

Q. He fell on his hands on the deck?

A. Fell on his hands on the deck; yes, sir.

Q. Did you observe whether or not he stumbled on anything? A. No, sir; he jumped, sir.

Q. He jumped? A. Exactly.

Q. And fell? A. And fell on his hands.

Q. Did you observe whether that mat was lying flat on the top of the pile of lumber or was *it* partially over the edge of the lumber when he stepped on it? [165] A. Quite flat.

Q. Not hanging over the edge? A. No, sir.

Q. How near the outer edge of the lumber was it?

A. It would be about four or five inches from the lumber.

Q. As you observed it?

A. As far as I could see; yes, sir.

Q. Now, after he fell to the deck and before anybody touched that mat, did you observe it?

A. I saw the mat when it was in position before he came on board.

Q. But I mean after he fell?

A. I noticed the mat after he fell; yes, sir.

Q. Did you take any note as to whether or not it had shifted its position any?

A. Well, I don't think it had; I am not sure of that; I don't think so; the mat seemed to be exactly the same.

Q. But you did not observe any shift at any rate?

(Testimony of Charles Patterson.)

A. No, sir.

Q. What kind of a morning was it that morning when the doctor came aboard?

A. A very nice morning, sir.

Q. Dark, or daylight, or semi-dark?

A. Oh, daylight, sir.

Q. Would you have any difficulty in seeing a person coming aboard in that position?

A. None whatever, sir.

Q. Quite daylight and clear?

A. Yes, sir; quite daylight and clear.

Q. Was there any swell? A. No, sir. [166]

Q. The vessel was at anchor?

A. At anchor, sir; yes, sir.

Q. Was the vessel still or rocking?

A. Still, sir.

Q. Had anyone else come aboard the vessel before the doctor came aboard?

A. Not to my knowledge, sir.

Q. Did anybody come aboard after the doctor?

A. Oh, yes.

Q. Who were they?

A. Customs officers, two officers of the port.

Q. Anybody else that you saw?

A. No, sir; I didn't see anybody else, sir.

Q. Had they come up to the top of the rail when the doctor fell?

A. Oh, yes, they just came up after the doctor.

Q. How long did it take from the time the doctor stepped over the rail until he fell to the deck, would you say?

(Testimony of Charles Patterson.)

A. Well, I should say about two or three minutes, two minutes.

Q. Two minutes after? A. Yes, sir.

Q. Now, Mr. Patterson, will you please take my watch here and watch while the second-hand goes around one minute, and then two minutes, and see whether you think it took that long or more or less.

Mr. CATHCART.—I still don't think that is the right way to examine the witness as to time.

Mr. OLSON.—A watch is the proper method of taking time.

The COURT.—I don't think there is anything irregular in that, Mr. Cathcart. The idea is to get the witness' estimate of the time. Of course, a minute is a definite measure of time. [167]

Mr. OLSON.—You observe how that second-hand is going around? A. Yes, sir.

Q. What I want to get at is, from the time he stepped over the rail, the immediate time he stepped over the rail to the mat until he fell to the deck, how long do you think it was?

A. Of course, it is a very hard thing to judge; I am unable to say. It might probably be two minutes from the time he stepped from the rail on to the mat. It would take, anyway, four or five minutes, I should say at least, still it is very difficult for a man to judge.

Q. Now, when he stepped over the rail, where did he first step to? A. On to the mat.

Q. What did he do then?

A. Well, he jumped on to the deck.

(Testimony of Charles Patterson.)

Q. Immediately?

A. A second, probably, two or three seconds might have taken place before he did.

Q. Might have taken place? A. Yes, sir.

Q. As I understand it, then, he stepped over the rail on to the mat and then jumped?

A. Quite so.

Q. Did he stand on the pile of lumber any length of time?

A. Oh, two or three seconds before he jumped; yes, sir.

Q. Was the deck wet or dry? A. The deck?

Q. Yes. A. Well, it might have been damp.

Q. From what?

A. From washing down, probably. [168]

Q. Do you know whether or not—did you take any note of the mat to see whether it was wet or dry?

A. No, I didn't take particular notice of it.

Q. Did you take any particular notice to see whether the lumber pile was wet or dry?

A. That was dry, sir.

Mr. OLSON.—No further questions.

Cross-examination of CHARLES PATTERSON.

Mr. CATHCART.—What was the mat put there for, do you know? A. The mat?

Q. Yes.

A. For the boarding officers to step on.

Q. Why do they put a mat there for them to step on?

A. It is the usual thing on every ship, in ships I have been in, sir.

(Testimony of Charles Patterson.)

Q. To prevent a person from slipping on the boards?

A. Not at all, sir; it is the usual thing in every ship; I couldn't say what for, but at the foot of the gangway there is a mat placed.

Q. A mat at the foot of the gangway always, eh?

A. Always.

Q. How far away were you from where the Jacob's ladder came up over the rail?

A. Just at the corner of the chief officer's cabin.

Q. Well, how far would that be? [169]

A. Roughly, sir, about five or six feet, I should think.

Q. From where the Jacob's ladder came?

A. From the side of the ship where I was standing, to the side of the ship, probably five or six feet.

Q. Was it directly opposite the Jacob's ladder?

A. Almost exactly.

Q. You were standing there, were you?

A. I was standing there at the time; yes, sir.

Q. You were the nearest person to the doctor, were you?

A. I wouldn't say so, sir; there were others besides myself.

Q. Any others there? A. Yes, sir.

Q. Who were they,—do you remember?

A. They are not on the ship at the present time; they were here last trip.

Q. You were waiting for the doctor, were you?

A. Exactly; yes, sir.

Q. And did I understand you to say it was about

(Testimony of Charles Patterson.)

two minutes when the doctor came up the Jacob's ladder before he fell?

A. Not before he fell; I say about two minutes before he stepped on to the mat.

Q. Now, what was two or three minutes? Tell us again what you mean by that.

A. I didn't have a watch to time it, but I should say from the time he stepped to the rail—stepped from the rail on to the mat, about two or three minutes elapsed; it might have been more; I didn't say definitely, as it is a very hard thing to judge if you haven't got a watch in your pocket and not timing anything.

Q. I am well aware of that, but I want to know what your judgment [170] of it was. Do I understand you to say from the time he stepped over the rail on to the mat it was two or three minutes?

A. It might have been less.

Q. Before he stepped on to the mat or before he jumped down?

A. Before he stepped on the mat.

Q. That is, from the time he got to the top of the rail and stepped on to the mat, three or four minutes could have elapsed? A. Yes, sir.

Q. Well, he must have fallen then right in front of you almost.

A. I saw him on the deck on his hands.

Q. He must have fallen quite close up to you, then?

A. Well, not a great distance away.

(Testimony of Charles Patterson.)

Q. Did he fall right close to the pile of lumber or did he fall out?

A. Out from the pile of lumber, out on the deck.

Q. If you were five feet away he must have been between you and the pile of lumber when he fell there?

A. No, he was the fore part of me, I was the after part; he fell in front of me. I was standing at the after part of the chief officer's cabin when he was picked up by one of the officers.

Q. When you were standing at the after part of the cabin of the chief officer, how far away were you from the Jacob's ladder where it went over the side of the vessel?

A. The same position exactly as when he came over the rail.

Q. How far away were you, I want to know?

[171]

A. I was exactly the same distance; I was in the same place I was when he came over the rail.

Q. That would be about five feet, is that it?

A. Roughly, yes, sir.

Q. You did not start to pick him up or anything?

A. No; one of the officers.

Q. Which officer was it?

A. I think it was the second officer.

Q. It was not the third officer, then, eh?

A. The second; he was third officer then; he is the second officer now.

Q. You just stood there, did you?

A. Yes, and then I went for medical comforts

(Testimony of Charles Patterson.)

when I had instructions from the captain.

Q. How old are you? A. Fifty-two.

Mr. CATHCART.—That is all.

Mr. OLSON.—No further questions. [172]

Testimony of Bernard Krumin, for Libellee.

Direct examination of BERNARD KRUMIN,
for libellee, sworn.

Mr. OLSON.—What is your name?

A. Bernard Krumin.

Q. What is your occupation?

A. Able seaman.

Q. How long have you been following the sea?

A. About twelve years.

Q. On what ship are you employed now?

A. "Coolgardie."

Q. And how long have you been on the "Coolgardie?" A. Eighteen months.

Q. As able seaman?

A. Yes, all the time.

Q. And were you on the "Coolgardie" when she called at the port of Honolulu on the 12th of August, 1917? A. Yes, sir.

Q. Were you on the deck of the vessel when the United States health boarding officer, Doctor James, who is here in court, came on board? A. Yes, sir.

Q. What part of the deck were you?

A. Fore part of the deck.

Q. Forward or aft of the point where he came over the rail? A. Forward.

Q. Facing the point where he came over the rail, or otherwise? A. I was facing it.

(Testimony of Bernard Krumin.)

Q. What side of the vessel did he come over?

A. Over the port side. [173]

Q. How did he come up to the top of the rail from the boat that he came out in?

A. By means of the Jacob's ladder.

Q. What time of day was it that the "Coolgardie" came off port?

A. It was about seven o'clock in the morning.

Q. About what time was it when the doctor came aboard? A. It was about seven o'clock.

Q. Well, hadn't the vessel dropped anchor before he came aboard?

A. The vessel dropped anchor about six o'clock that morning.

Q. When the doctor came over was it daylight or dark? A. It was daylight.

Q. Full daylight? A. Full daylight.

Q. Clear, or a muggy morning?

A. Clear morning.

Q. Had there been any rain during the night?

A. No, there had been no rain during the night.

Q. What about swells,—any swell?

A. No, it was nice and smooth.

Q. As the vessel lay there anchored when the doctor came aboard, was the vessel rocking or lying still? A. She was lying still.

Q. What about the condition of the decks as to being wet or dry? A. The decks were wet.

Q. What from? A. Washing down.

Q. Had the washing down been completed when the doctor came aboard?

(Testimony of Bernard Krumin.)

A. All completed when the doctor arrived.

Q. About how far forward of the bridge would you say was the [174] point where the Jacob's ladder was fastened to the rail?

A. About ten feet to the fore part of the bridge.

Q. Was there anything on the decks next to the rail at the point where the ladder came up to the rail?

A. There was a pile of lumber.

Q. Consisting of what kind of lumber?

A. Of two different kinds of lumber.

Q. Yes, what kinds?

A. Inch boards and two-inch boards in thickness, and about six inches wide the small lumber, and about twelve inches wide the big lumber.

Q. Yes, and most, or more of which kind?

A. More of the big kind.

Q. And about how high was that pile of lumber?

A. You mean how high—

Q. From the deck.

A. About two foot six or two foot nine.

Q. How high is the rail from the deck?

A. About four feet.

Q. How wide was the pile of lumber from the rail?

A. About three feet wide.

Q. Do you know when that was piled there?

A. Beg pardon?

Q. When was that pile placed there?

A. After we worked the coal off the ship's decks, about a week out of Newcastle.

Q. Before or after leaving Suva, as you remember, which, do you remember whether it was before or

(Testimony of Bernard Krumin.)

after leaving Suva? [175] A. The lumber pile?

Q. Yes. A. After leaving Suva.

Q. Piled up just after leaving Suva, was it?

A. Yes, sir, piled up just after leaving Suva.

Q. Was it secure or not? A. It was all secure.

Q. How?

A. By means of lashings, lashed on both ends.

Q. Now, the pile, the top of the pile of lumber, was it level or uneven? A. It was level.

Q. How about the side of the lumber pile as it was piled on the deck, straight up and down or uneven?

A. It was pretty well straight up and down.

Q. Now, were any of the boards on the top of this pile of lumber loose or unsecure when the doctor came aboard? A. None of them loose, all secure.

A. All secure and fast? A. Yes, sir.

Q. Was there anything on the top of this pile of lumber when the doctor came aboard? A. A mat.

Q. What kind of a mat? A. Door mat.

Q. I will call your attention to Claimant's Exhibit 1, this door mat here,—see that?

A. Yes, sir.

Q. Was it anything like that?

A. Exactly the same kind.

Q. Made of the same kind of material?

A. Same kind.

Q. Was it lying flat on the pile of lumber or partially over, hanging over? [176]

A. Lying flat on the pile of lumber.

Q. Not hanging over? A. No, none of it.

Q. Was the lumber pile wet or dry?

(Testimony of Bernard Krumin.)

A. The lumber pile was dry.

Q. How about the door mat,—did you observe?

A. It might have been a bit wet on account of washing down and might have got a bit damp.

Q. Now, you saw the doctor come over the rail, did you? A. Yes, sir, I did.

Q. Just state when he did when he came over the rail, what did he do.

A. When he went on board he come up the Jacob's ladder and stepped on the timber and when he got on top of the mat he jumped to the ship's deck, and by doing so he fell.

Q. Anything that he stumbled on? A. No.

Q. Do you remember how the pile of lumber was piled aft at the after-end?

A. It was pretty level on the after-end, some of the lumber was long and it was sticking out; it wasn't exactly perpendicular on account of some being longer and some shorter.

Q. How about the bitts,—where were they with reference to the pile of lumber?

A. They were in the after part of the pile of lumber.

Q. Were they clear of the lumber?

A. Yes, the bitts were clear of the lumber.

Q. How far from the top of the lumber would it be to the top of the bitts, down?

A. About eighteen inches. [177]

Q. And how high are the bitts, from the top of the bitts to the deck? A. About fifteen inches.

Q. Well, could a person step from the top of the

(Testimony of Bernard Krumin.)

lumber pile down to the bitts and from the bitts to the deck? A. That I couldn't say.

Q. You didn't note that particularly? A. No.

Q. Did you notice the position of the mat on the lumber pile after the doctor fell to the deck?

A. It was exactly as it was before, the same as it was before because it was never moved.

Q. Did you notice whether or not it had shifted somewhat? A. No.

Q. Might it have shifted somewhat?

A. No, it never shifted at all; it was lying in the same position it was before he came aboard.

Cross-examination of BERNARD KRUMIN.

Mr. CATHCART.—How do you know that?

A. Because I was standing close by it.

Q. How near were you?

A. I was about, anywhere from ten to fifteen feet off the place where the doctor fell.

Q. And how was the mat lying before he came up?

A. The mat was lying flat on the lumber, placed flat on the [178] lumber.

Q. Whereabouts?

A. On the after-end of the pile of the lumber the mat was placed.

Q. And how was it lying on the pile of lumber?

A. It was lying flat fore and aft.

Q. And how near to the rail?

A. About two feet off the rail.

Q. And had you seen that mat before that morning? A. Beg pardon?

Q. Had you seen that mat before that morning?

(Testimony of Bernard Krumin.)

A. Yes, the mat was there all the morning.

Q. Who put it there? A. That I couldn't say.

Q. Were you on watch that morning?

A. No, I wasn't on watch that morning.

Q. What time did you come up?

A. I come on deck about six o'clock,—about half-past six that morning.

Q. After the ship had anchored?

A. After the ship had dropped anchor.

Q. You didn't have anything to do with the washing down then?

A. No, I didn't have anything to do with it.

Q. You didn't have anything to do with placing the mat there? A. No.

Q. And when the doctor fell, what did you do?

A. Beg pardon?

Q. When you saw the doctor fall, what did you do?

A. I didn't do anything because the second officer was nearest [179] to him and picked him up and brought him to the wheel-house.

Q. Did you stay where you were?

A. I was stationed where I was, because we were all called out for medical examination.

Q. And you remained where you were?

A. I remained where I was.

Q. And did you see anybody come up after the doctor did?

A. Yes, sir, the customs officer and the immigration officer.

Q. You saw them come up right after he came up?

(Testimony of Bernard Krumin.)

A. Yes, sir.

Q. Did you see the doctor fall on the deck?

A. On the deck?

Q. Yes. A. Yes, sir.

Q. How did he fall?

A. He jumped down and slipped and fell down on the ship's deck.

Q. What part of him struck the deck first when he fell, what part of his body struck the deck?

A. That I couldn't say.

Q. Can you say how he fell, forward?

A. I saw him fall down, but I couldn't say what part of his body struck the deck first.

Q. Could you see whether he fell forward on his face? A. No, he must have fell forwards.

Q. The mat was not disturbed after that?

A. No, it was in the very same place it was after the doctor fell.

Q. Have you talked this over with anybody since?

A. No.

Q. You haven't refreshed your memory in any way about this at [180] all by talking with anybody? A. No.

Q. Haven't spoken about it to anybody at all since August, 1917? A. No.

Q. Would you say the mat was dry?

A. I couldn't swear the mat was dry; it might have been a bit damp.

Q. From where you were standing couldn't you see whether it was wet or dry?

A. It was put from the mate's door on top of the

(Testimony of Bernard Krumin.)

timber, you see; that's where the mat came from.

Q. The mat came from the mate's door,—how do you know that?

A. Because the mat was laying outside of the mate's door.

Q. When was it lying outside of the mate's door?

A. The officers generally keep a mat outside of each door.

Q. How do you know?

A. Because I saw it there.

Q. See somebody pick it up and put it there on the lumber? A. Yes, but I didn't see who it was.

Q. Did you see it taken?

A. No, I didn't see it taken.

Q. Was it outside of the mate's door?—

A. Yes, sir; it was outside of the mate's door—

Q. —when you came on deck? A. Yes, sir.

Q. Anything you want to say further?

Mr. OLSON.—Let the question be read to the witness and let him complete his answer.

(Last question read as follows: Was it outside of the mate's door,—) [181]

Mr. CATHCART.—When you came on deck was it outside of the mate's door?

A. Yes, sir; it was outside of the mate's door when I came on deck.

Q. It was outside when you came up on deck?

A. Yes, sir.

Q. Any other mats outside of the doors when you came on deck?

A. The officers generally keep a mat each in their

(Testimony of Bernard Krumin.)

room, as I stated before—

Q. Did you see any other mats that morning?

A. None except the mate's.

Q. None at all except the mate's? A. No.

Q. Do you know whether it was inside of his room or put up on the lumber pile?

A. It was put outside of his room, and after they finished washing down it was put up on the top of the lumber.

Q. But you did not see that done at all?

A. No, I didn't see, but I saw it outside there and afterwards it was on top of the lumber, I don't know who placed it there.

Q. Did you see any other mats outside of the doors?

A. No, none besides the mate's mat; his mat was the only one outside of the doors; all the others had theirs inside.

Q. All the others were inside? A. Yes, sir.

Q. You remember that, do you? A. Yes, sir.

Q. And were the boards dry?

A. The boards were dry.

Q. You hadn't had any rough weather at all coming up?

A. No, we didn't have any rough weather, and not raining at all for three or four days previous.

[182]

Q. Hadn't shipped any seas coming over?

A. Smooth weather all the way coming from the south.

Q. Very smooth; shipped no seas at all? A. No.

(Testimony of Bernard Krumin.)

Mr. CATHCART.—That's all.

Redirect Examination of BERNARD KRUMIN.

Mr. OLSON.—Mr. Krumin, when you say you haven't talked this matter over with anybody else, I will ask you this: You told me the story, did you not, you gave me what information you knew about the matter the other day aboard the ship, you told me about it, did you not?

A. Yes, sir.

Q. But what you meant to say was that you have not discussed the matter with anybody else,—is that what you mean? A. Yes, sir.

Recross-examination of BERNARD KRUMIN.

Mr. CATHCART.—Well, you told the captain, didn't you?

A. About what?

Q. What you had seen there? A. No.

Q. Tell the second officer?

A. They never asked me any questions about it.

[183]

Q. You say the first person you told what you saw there was Mr. Olson here? A. Yes, sir.

Q. And that was when?

A. That was in last Thursday.

Q. Last Thursday? A. Yes, sir.

Q. And from August 17th, 1917, up to last Thursday, you never spoke about this to anybody?

A. No, no one; there was nobody ever asked me anything about it; I didn't know anything that there was such a case on.

(Testimony of Bernard Krumin.)

Q. The accident did not make any particular impression on your mind at the time, did it?

A. I never took any deep interest in it.

Q. Never took any particular notice of it, did you?

A. No, sir.

Q. Never made any impression on your mind, the doctor falling on the deck, did it? A. No.

Redirect Examination of BERNARD KRUMIN.

Mr. OLSON.—When you say you did not take any particular notice of it, do you remember all the things you have testified to?

A. Yes, I remember what I testified to.

Mr. OLSON.—That is all. [184]

Testimony of Conrad Olson, for Libellee.

Direct examination of CONRAD OLSON, for libellee, sworn.

Mr. OLSON.—Your name is what?

A. Conrad Olson.

Q. What is your nationality? A. Norwegian.

Q. What is your occupation? A. A. B.

Q. Able seaman, that means? A. Yes, sir.

Q. How long have you been at sea?

A. Four years.

Q. What ship are you on now?

A. "Coolgardie."

Q. How long have you been on the "Coolgardie?"

A. Nine months.

Q. Were you on the "Coolgardie" when she called at the port of Honolulu on August 17th, 1917?

A. Yes, sir.

(Testimony of Conrad Olson.)

Q. As an able seaman? A. Yes, sir.

Q. What time did she come off port that morning, what time was it she dropped anchor off the port? I don't care exactly.

A. Twelve o'clock, I think it was, night-time,—two o'clock in the morning.

Q. Well, what time,—were you on the vessel when the ship's doctor came aboard? A. Yes, sir.

Q. Not the ship's doctor, I mean the United States doctor. A. Yes, sir.

Q. What time of day was that?

A. Just before breakfast, eight o'clock.

Q. Early morning, was it dark?

A. No, it was daylight. [185]

Q. Did you see him come aboard?

A. No, I didn't observe him come aboard.

Q. Were you on deck when he did come on board?

A. Yes, I was.

Q. What part of the deck?

A. Right abreast of the fore rigging.

Q. That is forward of the bridge, is it not?

A. Yes, sir.

Q. About how far forward from the place where the doctor came over the rail? A. Ten feet.

Q. Anybody else up there?

A. Yes, sir, there was about ten or twelve of us there.

Q. What were you up there for?

A. To be examined.

Q. To be examined by the doctor? A. Yes, sir.

Q. Were you facing the doctor when he came over

(Testimony of Conrad Olson.)

the rail, or were you not?

A. No, I don't think I was.

Q. Did you see him fall to the deck? A. No.

Q. You didn't see him fall to the deck?

A. I didn't observe it.

Q. Didn't happen to be looking that way?

A. I wasn't looking in that direction.

Q. Now, Mr. Olson, about how far forward from the bridge was it that the ladder was fixed for the doctor's coming aboard?

A. Ten or twelve feet, I reckon.

Q. On which side of the vessel? A. Port side.

Q. How high is the rail to which the ladder was fastened, from [186] the top of the deck?

A. Between four and five feet.

Q. Was there anything else on the deck next to the rail or bulwarks, was there anything piled there?

A. There was a pile of wood.

Q. What? A. A pile of lumber.

Q. What kind of lumber? A. Rough lumber.

Q. About how thick were the pieces?

A. About an inch and a half.

Q. And how wide, would you think?

A. A feet, and some a half a feet.

Q. Was that loose lumber, or secure?

A. Secure.

Q. How was it secured? A. By lashings.

Q. When was that—at what time on the voyage was it that that was lashed up there, do you remember when that was done?

A. After the coal was worked off the deck.

(Testimony of Conrad Olson.)

Q. And when was that?

A. About a fortnight before we arrived here.

Q. Before or after you left Suva?

A. After we left Suva, I think it was.

Q. Were any of these boards loose on top of that lumber pile when the doctor came aboard?

A. No.

Q. Secure, were they, and fastened?

A. Secured.

Q. About how high was the lumber pile from the deck? A. Two and a half feet, I reckon.

Q. And about how wide, from the rail?

A. About two and a half feet. [187]

Q. Just about square then as far as side and height was concerned, was it? A. Yes.

Q. About how high was the lumber pile, along the rail? A. Between fifteen and twenty feet long.

Q. And was there anything on that lumber pile when the doctor came over?

A. Yes, there was a mat.

Q. What kind of a door mat? A. A door mat.

Q. I will call your attention to Plaintiff's Exhibit 1, which we have here, see that? A. Yes.

Q. Was it anything like that?

A. Yes, something like that.

Q. And as big as that? A. Yes, sir.

Q. And about the same kind of a mat, was it?

A. Yes, same kind of a mat.

Q. And about the same size? A. Yes, sir.

Q. Was that mat lying flat on the top, or partially over the lumber pile or flat on the lumber?

(Testimony of Conrad Olson.)

A. I didn't observe it; I couldn't say; I don't know.

Q. Don't know, didn't take any particular note of it? A. No.

Q. Do you know who put that mat on the lumber pile? A. No, I don't.

Q. What kind of a morning was it?

A. Fine morning.

Q. You said before that it was daylight, did you?

A. Yes, sir. [188]

Q. Clear morning, was it? A. Yes.

Q. When the doctor came aboard? A. Yes.

Q. Was there any swell where the vessel was anchored? A. No.

Q. Still, was it? A. She was laying still.

Q. Had there been any rain during the night while coming to port, or after you got here? A. No.

Q. Were the decks wet or dry when the doctor came aboard?

A. It was damp yet, because we had been washing down.

Q. Had the washing down been completed when the doctor came aboard? A. Yes.

Q. Finished? A. Yes.

Q. How about the pile of lumber on top, was it wet or dry? A. Dry, I think.

Q. Dry, you think? A. Yes.

Q. How about this door mat you saw; did you observe whether it was wet or dry?

A. I didn't observe it.

Q. You didn't look to see, and you don't know?

(Testimony of Conrad Olson.)

A. No.

Q. And I think you said you didn't actually see the doctor come over the rail and fall to the deck.

A. No, I didn't observe it.

Q. Did you see him after he fell to the deck?

A. I seen him when the officer picked him up.

Q. Did you see the position of the mat on the pile of lumber [189] after the doctor fell, or did you take any note of that?

A. No, didn't take any notice of it.

Q. You did not take any notice of what its position was? A. No.

Mr. OLSON.—Take the witness.

Cross-examination of CONRAD OLSON.

Mr. CATHCART.—What time did you come on deck that morning?

A. I come on deck about just after seven o'clock, I think it was; they called out for station.

Q. That is for the doctor, you mean, to be examined. A. Yes.

Q. When had you been on deck before that night?

A. I come off watch at four o'clock.

Q. At four o'clock in the morning you went off watch? A. Yes, sir.

Q. You don't know whether that pile of lumber was wet or not, do you?

A. As far as I could see, it was dry.

Q. As far as you could see? A. Yes, sir.

Q. Had you had—what kind of weather did you have leaving Suva? A. Fine weather all the time.

Q. Didn't ship any seas at all? A. No.

(Testimony of Conrad Olson.)

Q. What?

A. I couldn't say, not when I was on deck, though.

[190]

Q. You hadn't had any rain that morning at all?

A. No.

Q. Nor that night? A. No.

Q. And the previous day, hadn't it rained?

A. No, I don't think so.

Q. You remember that, do you?

A. I don't remember; I couldn't say.

Mr. CATHCART.—That is all.

Mr. OLSON.—No further questions.

The COURT.—Further trial of this case will be continued until to-morrow afternoon at two o'clock.

The court then adjourned this case until March 12, 1918, at 2:00 o'clock P. M. [191]

[Title of Court and Cause.]

Honolulu, H. T., March 12, 1918, 2:00 P. M.

Testimony of H. A. Thomson, for Libellee.

Direct examination of H. A. Thomson, for libellee, sworn.

Mr. OLSON.—Captain, what is your name?

A. H. A. Thomson.

Q. T-H-O-M-S-O-N? A. Yes, sir.

Q. What is your occupation?

A. I am the master of the steamship "Coolgardie." [192]

Q. How long have you been following the sea?

A. Twenty-eight years.

Q. How long have you held a master's papers?

(Testimony of H. A. Thomson.)

A. I have held a master's papers since I was twenty-two years of age; I am twenty-four now—

Q. You are what now?

A. Forty-two, I should say; from twenty-two to forty-two,—twenty years.

Q. How long have you been master of the "Coolgardie"?

A. Master of the "Coolgardie"—I joined her in March two years ago.

Q. A year ago last March?

A. Two years ago this March.

Q. The "Coolgardie" is what kind of a ship?

A. She is an iron built steamship.

Q. Tonnage registered?

A. Registered tonnage 1653, gross 2542.

Q. You were master of the "Coolgardie," were you, when she called at this port on August 12, 1917?

A. Yes.

Q. Do you remember the occasion of Doctor James, the United States Health Boarding Officer—

A. I do.

Q. —coming aboard the "Coolgardie" that morning?

A. I do.

Q. About what time was it he came aboard?

A. About, as near as I can remember, seven o'clock in the morning.

Q. Was it daylight or not? [193]

A. The sun was a good bit above the horizon.

Q. Was it a clear day or a cloudy day?

A. A perfectly clear day.

Q. What about the steamship,—was it at anchor

(Testimony of H. A. Thomson.)

or not at the time he came aboard?

A. The steamship was at anchor at the time.

Q. Was there any swell? A. No.

Q. As she lay when the doctor came aboard, was the vessel rocking or still?

A. No, there was a slight, or a very light wind from the northeast, and the vessel was lying perfectly still, same as she would be in the harbor.

Q. Lying perfectly still? A. Yes, sir.

Q. Where were you on the vessel at the time Doctor James came aboard?

A. I was at the—what we may call the chart-house bridge, which is the next deck from the main deck. This deck is about seven feet above the other deck.

Q. The other deck being the deck to which Doctor James came, or fell, rather.

A. Yes, that's the main deck, the deck that runs right along from fore and aft.

Q. Was there anybody else on the bridge with you at that time?

A. There was the pilot; I believe his name is MacCaulay.

Q. When did he come aboard?

A. He come aboard about six-forty A. M.

Q. How did Doctor James get aboard the vessel?

A. He came over the Jacob's ladder that was hanging over the ship's side. [194]

Q. Which side? A. Port side.

Q. How did the pilot come aboard?

A. He came over the same ladder.

Q. Was the ladder hanging at the same place?

(Testimony of H. A. Thomson.)

A. Same place.

Q. When the pilot came aboard? A. Yes, sir.

Q. About how long before the doctor came aboard did Pilot MacCaulay come aboard?

A. It must have been about twenty minutes.

Q. And he was on the bridge with you when Doctor James came aboard? A. Yes.

Q. Had any other person come aboard besides the pilot when Doctor James came over the rail?

A. Not to my knowledge.

Q. Well, would you have known if there had been anybody else? A. I would.

Q. Did you see Doctor James come aboard?

A. I did.

Q. At the place where the Jacob's ladder by means of which Doctor James came aboard was placed, I take it was hung on to the rail, was it not?

A. Hung to the rail and made fast to the bulwarks inside.

Q. Over the rail? A. Yes.

Q. How high from the deck was the top of the rail? A. The rail from the deck?

Q. Yes. A. Exactly four feet two inches.

Q. How do you know that?

A. Because I measured it. [195]

Q. When did you measure it last?

A. I measured it last, yesterday.

Q. Has there been any change in the construction of the vessel as far as the height of the rail from the deck is concerned since the time Doctor James came aboard in August, 1917? A. None whatever.

(Testimony of H. A. Thomson.)

Q. So the top of the rail from the deck—

A. Is four feet two inches. It might be a bit less if we get into mathematical figures, a bit less but no more.

Q. When you say a bit less would it be an inch less? A. No.

Q. It might be a fractional part of an inch less, possibly?

A. Yes, a fractional part of an inch.

Q. How far,—well, this is on the port side of the vessel? A. On the port side of the ship.

Q. Forward part or the after part of the vessel?

A. Fore part of the bridge.

Q. How far forward from the bridge structure was this point where the ladder was hung?

A. About eleven feet, as near as possible.

Q. Several of the preceding witnesses have referred to some bitts that were located in that locality; were there any bitts there?

A. Yes, there are bitts inside of the bulwarks on the main deck.

Q. Are these bitts still on the vessel? A. Yes.

Q. Are they the same as they were when Doctor James came aboard?

A. The same as they were. [196]

Q. Captain, have you made any measurements or plans that will show to the Court the location of the bitts and the height of the bulwarks and the general appearance of the deck in the vicinity of that ladder? A. I have, sir.

Q. Will you please produce it?

(Testimony of H. A. Thomson.)

A. There is one plan to show the general deck construction,—that's the one, and one plan showing the bulwarks,—that's the one, and one showing the side—

Q. Three different plans, in other words?

A. Yes, sir.

Q. Well, I will identify them a little later. Calling your attention, in the first place, to the plan which you have labeled "Copy Plan Forward Deck, S. S. 'Coolgardie,'" I will ask you if that is a direct drawing showing the forward deck of the S. S. "Coolgardie"?

A. That is a correct copy of the printed plan of the ship, of a blue-print of the ship's plan.

Q. And who made that plan, the original plan?

A. That was made, of course, by the builders.

Q. And have you checked that up to see whether it is correct? A. Yes, sir.

Q. Was this a correct plan of the forward deck?

A. That is a correct plan of the forward deck.

Mr. OLSON.—I will offer that in evidence, if the Court please.

(Received in evidence, marked Claimant's Exhibit 2.)

Mr. OLSON.—If counsel has no objection I will have these offered in evidence, one after another, now, and examine the witness afterwards in reference to them. [197]

Q. Showing you another plan which you have produced, Captain Thomson, which you have labeled, "Plan showing bulwarks and rail," I will ask you if

(Testimony of H. A. Thomson.)

this is a correct drawing showing, from the inside of the bulwarks the height of the bulwarks and the general location of the bitts which you referred to?

A. That is a correct drawing of the measurements taken.

Q. That you have made yourself?

A. Yes, but not copied off of any of the ship's plans.

Mr. OLSON.—I offer it in evidence, if the Court please.

(Received in evidence and marked Claimant's Exhibit 3.)

Q. Showing you the third plan which you have produced, Captain Thomson, and which is labeled, "Plan showing ship's side ladder, water line to deck rail, "I will ask you if that is a correct drawing showing how the ladder was placed at that time, the rail and the stanchions inside of the bulwarks, and the one end of the bitts?

A. That is a correct drawing to measurements taken also as the previous ones.

Q. All of these plans being as of date that Doctor James came aboard that morning? A. Yes, sir.

Mr. OLSON.—I offer this in evidence.

Q. All of these were made by you when?

A. Sunday.

Mr. CATHCART.—This last plan, if the Court please, can't show the exact position, I take it, of the side of the vessel and the ladder down on that date.

Mr. OLSON.—For the purposes of the record, this

(Testimony of H. A. Thomson.)

last plan is [198] merely offered to show the general way in which the ladder came up to the side of the rail, and not to show the exact point where the ladder was attached to the rail, merely that the Court can see in a general way what the situation was. I offer this plan in evidence, the one referred to last.

(Received in evidence, and marked Claimant's Exhibit 4.)

Q. Referring to Claimant's Exhibit 2, Captain, your plan of the forward deck of the S. S. "Coolgardie," I wish you would mark on this plan with a pencil with the letter, capital A, the bitts you have referred to near the point where the ladder came over the rail, just below the—yes. Have you now placed a capital A just below these bitts? A. Yes.

Q. In other words, you have indicated a little parallelogram there on your plan, in heavy ink, as intended to mark the location of the bitts?

A. The location of the bitts.

Q. Yes; now, will you mark with the capital letter B approximately where the ladder came over the rail.

(Witness marks.)

Q. Just forward of these bitts; is that right?

A. Just forward of them.

Q. Now, will you mark with the letter C the platform, or the deck which you have referred to as the bridge deck where you and Captain MacCaulay,—Pilot MacCaulay were standing when Doctor James came aboard?

(Testimony of H. A. Thomson.)

A. This affair here is known as the navigation bridge; I can't show that position because on this plan the bridge—the [199] navigation bridge deck is drawn above it.

Q. And as I understand it, the bridge that you and Pilot MacCaulay were on, was underneath?

A. Underneath.

Q. All right; now mark with the letter capital C the bridge which is shown on this plan underneath which was the deck on which you and Pilot MacCaulay were standing. Have you so marked that?

A. I have marked it.

Q. Now, will you mark with a pencil a line with an arrow at each end, where the lumber pile that has been referred to in the evidence of previous witnesses, was located at the time Doctor James came aboard?

A. With a pencil at each end of the lumber pile?

Q. With an arrow head at each end of the lumber pile.

(Witness so marks.)

Mr. OLSON.—Draw the line clear through.

Q. Have you so marked the approximate location of the lumber pile? A. I have.

Q. All right. Showing you Claimant's Exhibit 3, Captain, the plan showing the bulwarks and rail, on this plan you have the word "rigging" written in. Is that forward of the bridge or aft?

A. That is forward of the bridge.

Q. Yes, and represents the location of the forward

(Testimony of H. A. Thomson.)

rigging of the vessel? A. Of the foremast rigging.

Q. You have the words top rigging written in here—top rail, [200] I should say, above the part of this plan. What are those words intended to indicate?

A. That indicates the wood that goes over the iron bulwarks.

Q. The iron bulwarks being the diagonal lines portion at the top of the drawing? A. Yes, sir.

Q. Now, from underneath the words “top rail” down to the line immediately above the words “deck line” there is a space there. Does that represent the height of the bulwarks?

A. That represents the height from the deck right on the top rail.

Q. Shown here as four feet two inches.

A. Yes, four feet two inches.

Q. Yes, and written in that space representing the bulwarks is the word “bulwarks,” is it not?

A. Bulwarks, yes, sir.

Q. Now, opposite these various figures on this plan you have, for example, the word “nine” with an apostrophe immediately above it. What does that mean?

A. That means nine feet.

Q. Now, where you have entered the figure “13” and a 9” with two apostrophes?

A. That means 13 feet nine inches.

Q. That indicates clearly, then, what is meant in each case? A. Yes, sir.

Q. All right. Now, at the left-hand side of the

(Testimony of H. A. Thomson.)

plan you have the word "bridge" written in here. What does that indicate?

A. That indicates the first deck above the main deck. [201]

Q. In other words, the location of the bridge that has heretofore been referred to in the testimony?

A. Yes, sir.

Q. In the bulwarks plan between where you have the word "bridge" written and the words "top rail" written, down at the lower portion appear to be two drawings, drawings of two posts at the top and inside of each one of which is 12" indicated and down below 9" indicated, and between these two posts 13" indicated at the top and 16" lower down. What do these two posts or drawings represent?

A. Well, they are the plans of the bitts, and they represent the diameter of the bollards themselves.

Q. Now, where you have 12" written in in each one of them, that represents what?

A. That represents the top cap of the bollard on the bitt.

Q. In other words, the diameter of the top of the bitt? A. Yes.

Q. And the 9" lower down in each case?

A. That represents the diameter of the body of the bollard.

Q. I see; the top being wider than the post itself?

A. Yes.

Q. On the left-hand side at the bottom you have indicated here 6' 10" with arrows running through

(Testimony of H. A. Thomson.)

either side, one toward the bridge line and one toward the bitts. What does that mean?

A. That is the distance that the bitts are from the bridge deck.

Q. Yes, that is the side of the bitts nearest to the bridge? A. Yes, sir.

Q. And below the bitts you have 4' 7" indicated, that represents [202] what?

A. That represents the length of the bed of the bitts.

Q. The base, in other words.

A. The length of the bed.

Q. In which it is located?

A. What we call the bed; it is a platform laid on in which the bitts are secured in the deck.

Q. So that from the line of the bridge to this bed of the bitts the nearest side will be six feet ten inches? A. Ten inches; yes, sir.

Q. And there would be four feet seven inches additional to the other extreme end of the bed?

A. Of the bed of the bitts.

Q. And thirteen inches between the tops of the two bitts from the two posts?

A. From the extreme tops of the two bitts there is thirteen inches.

Q. And the posts, sixteen inches?

A. The posts sixteen inches.

Q. Now, at the left-hand side of the drawing and almost below the word "bridge" you have indicated here 9' with an arrow on either side. That means

(Testimony of H. A. Thomson.)

nine feet from what to what?

A. That is nine feet from the bridge down to the first stanchions on the rail.

Q. Stanchions which extend from underneath the rail above, down to the deck?

A. Yes, down diagonally.

Q. You have indicated on the plan one-quarter inch per foot; is that the scale? [203]

A. That's the scale according to taking off an ordinary rule.

Q. And that is a sketch of this map or plan?

A. Yes, sir.

Q. Now, referring to Claimant's Exhibit 4, the plan which you produced showing the ship's side ladder water line to deck rail, this zig-zag affair just outside of the perpendicular parallel lines represents what?

A. That represents the Jacob's ladder, but that is not entirely according to plan of what may be the Jacob's ladder,—that Jacob's ladder according to the drawing there it is not to scale; it is only an imitation of where the ladder was hanging and how long, how it was hanging.

Q. Now, that parallel line is intended to represent the outside of the vessel, is it not, from the top of the rail down to the sea?

A. That represents the top of the ship outside.

Q. Now, at the top you have indicated here 10", what does that represent?

A. That represents the width of the rail itself.

Q. Underneath this rail and toward the inside is

(Testimony of H. A. Thomson.)

something running diagonally down apparently toward the post representing one of the bitts, what is that?

A. That represents a stanchion.

Q. And that is an iron or steel structure?

A. Iron structure.

Q. A support to the bulwarks and rail, is it not?

A. Yes, sir.

Q. And as you have explained in the other drawing, this post indicated here toward the inside is an end view, is it not, [204] of the bitts?

A. It is one end view.

Q. And then you have the deck indicated, and further still, the hatch. A. That's right.

Q. Now, between this view of the bitts and the stanchion as you have indicated here, is the figure 19"; what does that represent?

A. That represents the distance of the cap of the bitt to the bulwark itself.

Q. From the bulwark itself? A. Yes.

Q. Now, Captain, did you see Doctor James actually come over the rail? A. I did.

Q. When he came over that rail was there anything inside of the rail or bulwarks on top of which the rail is and on the deck?

A. Yes, there was a pile of timber, a pile of lumber.

Q. What kind of lumber?

A. It was dunnage boards, what we call it.

Q. And what were the sizes of these dunnage boards as near as you know?

(Testimony of H. A. Thomson.)

A. Well, most of them two by twelve inch boards.

Q. Two inches thick and twelve inches wide?

A. Two inches thick and twelve inches wide.

Q. And how long?

A. Oh, the heavy ones would be nothing under fifteen, and perhaps up twenty feet long.

Q. What other kinds of boards were there besides the two by [205] twelve boards?

A. Well, there was the second class of dunnage boards that we use, that was one by six inches.

Q. And about how long?

A. Well, they would be nothing below, well, say about twelve feet, and some longer, maybe.

Q. And was this pile of lumber a loose pile of lumber, or secure?

A. No, it was perfectly secure.

Q. How?

A. By two lashings on to each stanchion on each end of the timber.

Q. Were there any loose boards in the pile?

A. No, no loose boards.

Q. Piled haphazard or regular?

A. Piled absolutely regular.

Q. About how high from the top—from the deck to the top of the pile?

A. Well, from the deck to the top of the pile, nothing under two feet nine, probably three feet.

Q. Not less than two feet nine?

A. I don't think so.

Q. And it might be as high as three feet?

(Testimony of H. A. Thomson.)

A. Yes.

Q. But not over three feet? A. No.

Q. In that case, Captain, as I understand it, from the top of the pile of timber to the top of the rail it would be anywhere from a foot and two inches to a foot and five inches?

A. I should say about from one foot three; I don't think it [206] might have been less.

Q. How wide was this pile of timber from the bulwarks outward toward the deck? Or, in other words, toward the deck if you want to put it that way.

A. You mean the top, sir?

Q. The top of the pile of lumber.

A. Over three feet.

Q. Over three feet? A. Yes, sir.

Q. How much over three feet?

A. Well, it might have been three feet six, but nothing below three feet.

Q. And are you able at this time to say that it was over three feet in width, and how?

A. Because there was one width of timber outside the bitts of twelve-inch planks, and as I already explained that inside cap of the bitts is nineteen inches of the bulwarks and the head of the bitts these are twelve inches and then adding twelve inches for the plank outside of these bitts we make it over three feet considerably.

Q. Nineteen inches to the inner side of the cap of the bitts? A. To the bulwarks.

Q. Yes.

(Testimony of H. A. Thomson.)

A. Then the cap itself is twelve inches wide, and then there was a plank laying outside of these bitts, which is also twelve inches wide.

Q. Which would be three feet seven inches?

A. Somewhere thereabouts, but it wouldn't amount to that much because taking about a foot or one foot three from the top of the rail downwards with the angle of the stanchions it [207] would of course cut a few inches off in that direction; that is what I consider, that the top of the timber would be somewhere about three feet three or thereabouts.

Q. The inner edge of the pile of the timber that is nearest to the bulwarks, would that be underneath the rail?

A. That was piled absolutely against the stanchion and took the same formation as the angle of the stanchion, the higher it went the more platform it gave on top.

Q. Now, as to this pile of lumber on top, was it level or uneven? A. It was perfectly level.

Q. These timbers, were they planed, smooth or rough lumber?

A. No, just the ordinary rough sawmill timber.

Q. Level but not smooth as far as the actual surface was concerned?

A. No, not smooth; just sawn timbers, not planed.

Q. How was the pile of lumber piled, about the bitts at the after end?

A. On the lower part of the deck the timber that I mentioned went the width outside of the bitts past the ends, the after ends past to the after end of the

(Testimony of H. A. Thomson.)

bitts, and I should say they would be about three timbers thick which would give about six inches rise from the deck. The rest was formed perfectly or almost into a level end.

Q. Up and down perpendicular?

A. Yes, but close up to the fore part of the second bollard, and then directly up.

Q. How much of a rise then,—before I get to that, how high are these bitts from the deck? [208]

A. They are twenty inches high.

Q. That is to the top of the bitts?

A. From the deck to the top of the bitts.

Q. So that there would be first a six-inch rise alongside the bits?

A. Of twelve-inch wide planks.

Q. Two inches thick about, each plank?

A. Two inches thick.

Q. Then there would be a fourteen-inch rise from the top of the lumber to the top of the bitts?

A. Yes, sir.

Q. And the bitts are twenty inches high, and the topmost part of the lumber pile being approximately three feet high, two feet nine or three feet, would leave the entire rise from the bitts to the top of the lumber pile of about sixteen inches—

Mr. CATHCART.—That is only a matter of computation.

Mr. OLSON.—About sixteen inches?

A. Somewhere there, but I think a bit less than that.

Q. Did you see Pilot MacCauley come aboard that

(Testimony of H. A. Thomson.)

morning? A. Yes, sir.

Q. How did he get to the deck?

Mr. CATHCART.—I object to that as incompetent, irrelevant and immaterial how he got to the deck.

Mr. OLSON.—I submit it is very material, if the Court please, as showing how someone else boarding in the same manner as Doctor James got to the deck, and if we can show that he took a method of getting to the deck that was perfectly open to him, a perfectly secure way without necessitating any [209] jumping, such as Doctor James has referred to, that was perfectly open and actually done by another person twenty minutes before Doctor James came aboard, that it has a material bearing upon the question of negligence here.

The COURT.—No, I don't think so, Mr. Olson.

Mr. OLSON.—Captain Thomson, at the time Doctor James came aboard, if—was there anything to prevent him, if he had looked to his right,—I think it would be to his right, towards the bridge, would it not? A. Yes.

Q. If he had looked to his right to see this situation as far as the piling of this lumber, the piling of this pile of lumber was concerned at that after end?

A. There would be nothing at all to stop him from looking around and seeing other means of getting down to the deck.

Q. I mean these particular means you have referred to, this step of some fifteen or sixteen inches from the top of the rail to the bitts and from the

(Testimony of H. A. Thomson.)

bitts down to these three planks one on the other about six inches high and thence to the deck, was there anything to prevent him seeing that if he had glanced to his right?

A. Nothing at all, because it was almost on his right hand.

Q. How far from the forward edge of the top of the forward bitt was the point where the ladder was fastened to the rail? A. What is that, sir?

Q. How far forward of the forward bollard of the bitts was the point where the ladder was fastened to the rail?

A. Well, the ladder would be almost opposite of the forward bollard of the bitt, maybe a little to the forward part of it. [210]

Q. So that a person stepping from the rail directly down would step on what? A. On the timber.

Q. On the timber, the pile of lumber?

A. The pile of lumber.

Q. And a person then turning aft would have before him what? A. Steps.

Q. Down to the bitts? A. Down to the bitts.

Q. And from the bitts down to the?

A. To the other timber and then on the deck.

Q. Yes. Was there anything on the top of the pile of lumber immediately before the Jacob's ladder when Doctor James came aboard?

A. There was a mat placed.

Q. What kind of a mat?

A. Well, what we call a coir mat, a door mat.

Q. Coir? A. Coir.

(Testimony of H. A. Thomson.)

Q. I refer you to Claimant's Exhibit 1,—this mat here, Captain. A. Yes, sir.

Q. Was it anything like that?

A. Similar to that.

Q. Well, when you say similar, was it smaller or larger or what? A. No, the same size.

Q. What about the construction of the mat, was it the same kind or different?

A. The same kind, because there was twelve mats ordered in Melbourne eighteen months ago and no other mats bought, so they are the same mats. Of course when the present owners bought the ship there was no mats aboard the ship at all so after making a trip we ordered twelve mats in Melbourne [211] for the ship's use.

Q. And this is one of the mats?

A. This is one of the mats.

Q. This is one of them?

A. Yes, sir, they are all the same size.

Q. And of the same make? A. Yes.

Q. When this ship called here at Honolulu in August of 1917, are you able to say whether any of these mats had become ragged or frayed in any respect?

A. I don't think any could become ragged. They had some use; they had been in use.

Q. As far as your recollection goes, were any of them ragged or frayed around the edges?

A. No.

Q. And this kind of mat you say was immediately before the Jacob's ladder on the lumber pile?

(Testimony of H. A. Thomson.)

A. Yes, sir.

Q. How was it placed?

A. Placed fore and aft the ship.

Q. How far from the outer edge of the lumber pile?

A. I should say the lumber pile was about nothing less than four inches clear.

Q. Clear from the mat itself?

A. Yes, clear from the mat itself.

Q. Do you remember who placed the mat on that lumber pile?

A. I don't know exactly the sailor, but I ordered a sailor to be placed.

Q. Ordered what?

A. A sailor to be placed, the same sailor that placed the ladder [212] over the side also placed the mat there.

Q. By your order? A. By my order.

Q. And you saw that done? A. Yes, sir.

Q. Now, then, Doctor James—Oh, before I get to that,—I think you said it was a clear morning, and that the sun shone when Doctor James came aboard?

A. Yes, sir.

Q. Had there been any rain during the night or the morning previous to Doctor James coming aboard?

A. No, we hadn't had any rain for about a week, or since we crossed the line.

Q. Since you what?

A. Crossed the Equator.

Q. Since you crossed the Equator?

(Testimony of H. A. Thomson.)

A. Yes, sir.

Q. Where was it, or what point on the voyage was it that this lumber pile was piled up alongside the bulwarks and lashed there?

A. It was after leaving Suva, because that lumber pile was used for the deck coal. When we left Newcastle we carried a load of deck coal aboard, bunker coal, which we placed on deck. This lumber is stuck along the stanchions to permit the coal going on,—to prevent it getting on the wheel chains, and also to keep the water ways clear, for any water that comes on the deck to get off. As soon as the coal is shovelled down in the bunkers from the deck which is done as ever they burn the coal up below, then these boards become dispensable and we take them and stack them up, and there is a pile lying on each side of the ship fore and aft, and we stack them up level, stack them so we can [213] go up and down, which is for our own benefit because we might have to use the place any time, and securely lash them and there it remains until we make the round trip and take more coal at Newcastle and then we use them boards again.

Q. Was the deck wet or dry the morning Doctor James came aboard, at the time he came aboard?

A. I think it was nearly dry, but not quite.

Q. What had made it damp or wet?

A. It was washed down.

Q. How often do you wash down the decks?

A. We wash in fine weather, if there is no sea coming aboard, every morning.

(Testimony of H. A. Thomson.)

Q. And about what time of day do you wash down?

A. We start at daylight, because the watch on deck starts as soon as they can see.

Q. And in washing down the decks, what is the first process?

A. The first process is to put on the hose, and the bos'n uses that and flushes around the deck, and there is two sailors using brooms sweeping the water away.

Q. After the sweeping off process takes place is there any water left flowing on the deck at all?

A. No; there wouldn't be any flowing water.

Q. Had the washing down of this part of the deck been completed when Doctor James came aboard?

A. Oh, yes, all the washing was completed.

Q. Which part of the deck is washed first?

A. They always start from forward.

Q. And go aft? A. And go aft.

Q. This part of the deck where Doctor James came aboard was [214] what, forward or aft? Which was it? A. Forward.

Q. Was the lumber pile wet at the time Doctor James came aboard?

A. No, the lumber pile was not wet, because there was nothing to wet the lumber pile.

Q. How about the door mat itself,—was that wet or dry?

A. Well, that would have been washed with the decks.

Q. With the decks?

(Testimony of H. A. Thomson.)

A. Yes, sir; all the mats that's generally lying about the decks is generally washed.

Q. So it might have been wet?

A. It was wet; it would be wet.

Q. Have you had any experience with mats of this character in going to sea?

A. A lot of experience with the mat at my chart-room door.

Q. Have you in your experience had occasion to observe whether a mat that is wet will slide or slip more readily or less readily on a board surface than when it is dry?

A. If there is a flowing surface of water enough to lift the mat it would take nothing to shift it, but on a damp surface where a mat is damp probably and the structure underneath is damp it would be a hard thing to shift those mats. When dry it shifts easily again.

Q. Referring now again to the way this lumber was piled next to the bitts at the outer end, if a person, as that lumber pile was piled on this morning that Doctor James came aboard, were to have gone down that after-end from the top of the pile of lumber to the bitts and thence to these three [215] planks and thence to the deck, could he or could he not have held on to the rail of the boat in going down?

A. Well, after he took the first step if he used that end, of course he would have the rail as a protection, but to my imagination I don't think if he used

(Testimony of H. A. Thomson.)

that there would have been any necessity of hanging on to anything.

Q. Now, will you please describe how you observed Doctor James get aboard that vessel from the time he came over the rail until the time he finally landed on the deck?

A. Well, as far as I can describe,—well, he put his foot over the rail the same as any man, there is only one way to do it, and when he got his one foot over then he put his other foot and kind of rested on the rail for a moment, then he stood up on the mat and from that he jumped down on deck.

Q. And what happened in jumping down?

A. Well, when he jumped down I don't know why he fell or how he fell, but it seemed to me that his feet momentarily struck the deck first but he went over to his hands and then on to his shoulder and head.

Q. Did any of the boards on the top of the pile of lumber slip or change position while he was stepping from the rail to the pile of lumber and up to the time he jumped to the deck?

A. No, that kind of boards couldn't be shifted unless the lashings were taken off.

Q. And they had not been taken off? A. No.

Q. Did you observe whether or not the mat shifted during the process of his stepping on to the mat and then jumping to [216] the deck?

A. That I can't say because immediately I saw him fall I came down from the bridge straightaway and helped Doctor James up to the chart-room.

(Testimony of H. A. Thomson.)

Q. Was there anything obstructing the view of a person coming over that rail of that mat as it was placed there? A. Nothing whatever.

Q. Was there anything obstructing the view of a person coming over the rail of the lumber pile itself?

A. No.

Q. Was there anything to prevent such a person from seeing the height of the top of the lumber pile to the deck?

A. No, it was perfectly clear to any person.

Q. Who came over or on to the vessel after Doctor James, if anybody?

A. There came two—well, I don't know what they were, one customs officer and one quarantine officer, I don't know their names, but I would know the persons if I saw them.

Q. Well, there is the doctor in the quarantine service, health service.

A. Yes, he went first and the two followed him, and I think one of them was from the quarantine and the one other from the customs.

Q. Might it have been an official from the immigration department when you say quarantine?

A. That's what I mean, yes.

Q. Did anyone else come aboard besides the doctor, the customs boarding officer and the immigration officer?

A. That I can't tell because possibly with the doctor there [217] might have been a half a dozen, for all I know; I was attending to the doctor; I was up in the chart-room.

(Testimony of H. A. Thomson.)

Q. As far as you saw, did you see anybody else?

A. That's all I saw, the customs officer and the quarantine officer. The customs officer was the other officer that helped me with the doctor up the steps to the chart-room.

Q. Up the steps? A. Up the steps.

Q. When you say the quarantine officer you mean the immigration officer?

A. Well, we always call all of them quarantine officers.

Q. And before Doctor James came aboard, who had come aboard? A. The pilot; that's all.

Q. And that is all? A. Yes, sir.

Q. And that was Pilot MacCaulay?

A. Pilot MacCaulay.

Q. Was there anything on the deck opposite this lumber pile in the nature of an obstruction or anything that would cause a person to stumble?

A. Nothing.

Q. It was a smooth board deck?

A. Smooth board deck.

Q. Could a person standing on that lumber pile on that mat see the condition of the deck?

A. Oh, yes, sir; nothing to prevent it, the same as if I stood on the edge of this rail and saw over it I could see the floor.

Q. Did the doctor speak to anybody from the time that he stepped over the rail until he fell on the deck? A. Not to my knowledge.

Q. Well, you were observing him, were you?
[218] A. Oh, yes.

(Testimony of H. A. Thomson.)

Q. How did you happen to be observing him?

A. Well, because it is our principal thing, because the health officer is the principal thing we look for when we are in port. Whenever that gentleman comes aboard he gives us practise and the ship can enter port and everybody is anxious and naturally pays more attention to the doctor than to anyone else.

Q. Was there any obstruction to a person's getting down to the deck at the after-end of the lumber pile by taking these natural steps, one from the lumber pile to the bitts, and thence down to the three planks that you have referred to lying outside of the bitts, and thence down to the deck?

Mr. CATHCART.—Objected to as incompetent, irrelevant and immaterial, that has fully been covered, if your Honor please.

The COURT.—I will admit it; answer the question.

Mr. OLSON.—Read the question, Mr. Reporter, was there any obstruction?

(Last question read.)

A. No, there was no obstruction whatever.

Q. Captain, you have been here in court, have you not, since the trial began? A. Yes, sir.

Q. So that you are familiar with the witnesses that have testified, that is, the chief officer, Mr. Provo, the present second mate, Mr. Hansen, the wireless operator, Mr. Black, and the bos'n, Mr. Sinclair, and the chief steward, Mr. Patterson, and two able seamen, Krumin and Olson?

(Testimony of H. A. Thomson.)

A. Yes, sir. [219]

Q. Are there any other men or persons on the vessel employed by the vessel at the present time or in the territory at the present time who were present when Doctor James, came aboard that morning?

A. There are some persons, but they were not present at the time.

Q. You mean not on deck, so that they could see, at the time?

A. They were not there to see but there are more persons.

Q. In other words, these witnesses are the only ones who saw Doctor James come aboard or saw him fall or go to the deck? A. Yes, sir.

Q. They are the only ones?

A. Yes, there are twelve altogether of the old crew on that voyage, still there.

Q. And the others?

A. They may have been in their room; I don't know.

Q. Hadn't come up on deck? A. No.

Mr. OLSON.—That is all.

Cross-examination of H. A. THOMSON.

Mr. CATHCART.—I notice on this plan of the showing of the bulwarks looking toward them from the deck of the ship, exhibit 3 of the claimant's, some yellowish marks on there.

A. Well, that isn't done to really represent anything; that is drawn only to show the height of the

(Testimony of H. A. Thomson.)

timber, but there is nothing to stipulate those to be facts. [220]

Q. So that the yellow—

A. As far as that is concerned, it doesn't represent anything, I ought to have really rubbed it out. Here is the other one.

Q. Is that what you call the forward bitt?

A. Well, that is not the forward bitt but that is a bitt on the forward deck, the fore part of the bridge.

Q. So that pile of lumber was near the after bitt the port side of the forward deck? A. Yes.

Q. And it extended in behind the bitt, did it, between the bitt and the bulwark?

A. The bottom part did, not the top.

Q. The bottom part? A. Yes, sir.

Q. And it occupied all the space between the bitt and the bulwark; it occupied twelve inches of the nineteen inches; is that right? A. The bitt did?

Q. No, the lumber or timber that was there.

A. The timber that was laying outside occupied twelve inches, yes.

Q. By outside, you mean between the bitt and the bulwark?

A. No, outside the bitt—naturally, between the bitt and bulwark, but inside?

Q. You drew at counsel's request a line with arrow-heads at each end and marked B to represent the pile of lumber.

A. Yes, but when you notice the other drawings you will find there is a stanchion shown that there couldn't be no timber [221] piled inside of these bitts.

(Testimony of H. A. Thomson.)

Q. So that line as you have drawn it inside the bitt and bulwark is wrong?

A. No, it is only marked the length of the timber; it don't specify the timber lying there; that mark only shows how far the timber ran from one end of the ship to the other. I didn't want to draw it over the figure A I first put down, so I put it inside.

Q. And as I understand it then, there was one length of planking laid down right against the bed of the bitt and outside of the bitt and extending along to the forward end of the pile of lumber?

A. That's right.

Q. And then on top of that one plank there would be another and another, so as to make three planks that were lying in that position?

A. In that position.

Q. And then a layer above these three planks—it commenced at the forward end of the bed of the bitt and went to the forward end of the pile of lumber?

A. That's right.

Q. And the layers continued straight up then from the forward end of the bitt to the top of the pile of lumber; is that right?

A. Practically straight up.

Q. And the ends up forward, were they straight too? A. On the other end?

Q. On the forward end of the pile of lumber.

[222]

A. Well, that wouldn't be straight; that would be different shapes; that is the forward end. The after-end would be formed in a different manner so as to leave the bits clear for mooring purposes.

(Testimony of H. A. Thomson.)

Q. How high is that bed of the bitt?

A. That's three inches high, the bed itself.

Q. The bed itself is three inches high?

A. Yes, sir.

Q. So that the plank would be three inches above the bed of the bitt? A. Yes, about that.

Q. Why wasn't the pile further forward so as to clear the bed? A. Beg pardon?

Q. Why wasn't the timber or lumber pile further forward so as to clear the bed entirely?

A. That might have been on account of the timber being too long because on the other end there was the rigging. We couldn't go past that.

Q. This Exhibit 4 which shows the side of the vessel and also the deck over to the hatch including the bitt— A. Yes, sir?

Q. There is a green shading on that. You just did that without any intention of having it a part of it? A. You mean the yellow shading?

A. Yes, I am a little color blind.

A. Yes, that's nothing.

Q. And the Jacob's ladder that is represented in this plan, you just draughted that in in order to give a general idea how—

A. That is only my imagination. [223]

Q. It goes up over the rail, doesn't it, and is fastened inside of the top part of the bulwarks?

A. Quite right, sir.

Q. And you give here from the top of the rail to the sea level thirteen feet three inches and also eleven feet three. A. Yes.

Q. What measurement is that?

(Testimony of H. A. Thomson.)

A. Thirteen foot three would be from the sea level to the top of the bulwarks. I put eleven foot three because I imagined that the doctor's launch that he came aboard with would be about two feet from sea-level from her decks which would make a step when stepping on the Jacob's ladder of about two feet less than the thirteen foot three; we measured from sea level to the bulwarks.

Q. How did you get thirteen feet three?

A. From the ship's draught.

Q. Well, is that loaded?

A. That is as she arrived in port.

Q. When? A. At that time.

Q. How do you know?

A. Because we take the ship's draught immediately she arrives which has to be entered in the official log-book.

Q. So that when you anchored there you took the draught, eh?

A. We take it in port which is more correct immediately we arrive.

Q. I see; so that when you come into port, as soon as you dock—

A. We take the draught fore and aft.

Q. How do you mean fore, how far forward?

A. The draught marks are on the stern, on the stern posts, [224] that is, the two extreme ends of the ship.

Q. Well, would the height of the extreme ends of the ship, would the draught be the same as amid-ships?

A. No, sir; she was drawing nineteen foot ten for-

(Testimony of H. A. Thomson.)

ward and twenty-two foot seven aft, and that would give her a mean draught of twenty-one feet two and a half inches, but considering that she had an angle of two foot nine, that would have been midship's angle of one foot four and a half, just half of the two foot nine where the ladder was placed which was about one-third or half of the distance from forward to midships, would give one foot four into one-third, which would give about five inches; therefore that added to the other would exactly make that distance from the ship's rail to the water. Of course, I am not talking into fractions, but as near as the figures would give me.

Q. Approximating?

A. Yes, as near as the figures would give me, it wouldn't be more than an inch either way.

Q. When did you figure this out?

A. Well, you can figure that out any time, sir.

Q. But when did you?

A. That was figured out Sunday. Those figures are carried always in the ship's official log which can be always seen or inspected if necessary.

Q. The stanchion in this Plan 4 is directly behind the bitt, or between the bitt and the bulwark?

A. It will show you on the bulwark plan, sir, where they are. I think I marked it there. There are three stanchions between the house and the bridge deck. [225]

Q. Between what house?

A. The W. C., I should say.

Q. The water-closet? A. Yes, sir.

Q. And the bridge deck? A. Yes, sir.

(Testimony of H. A. Thomson.)

Q. You put the place where the Jacob's ladder was at B on the deck plan right—almost right opposite the forward end of this bitt?

A. Yes, sir.

Q. That's where you think it was as your memory is?

A. A bitt to the fore part of it, but not much.

Q. You understand then—what do you call this, chart bridge?

A. Well, we call it the second bridge.

Q. Where is the second bridge?

A. The next from the main deck.

Q. Where you marked this C here?

A. I couldn't mark that position because it has a rail under the navigation bridge but I only marked it C so as to represent that deck being that second deck. The one that runs across is the navigation bridge which is over the other deck.

Q. Well, is the second bridge—does that run clear across? A. Yes, sir, it runs clear across.

Q. And then over it is the navigation bridge?

A. Yes, sir; over it is the navigating bridge.

Q. And how high from the deck is the second bridge? A. Seven feet.

Q. Seven feet? A. Yes, sir.

Q. How far away would you say you were in the—from where the Jacob's ladder was?

A. How do you mean, sir, in a straight line or an angle from [226] my eye to the deck to the Jacob's ladder?

Q. Well, say a straight line from where you were

(Testimony of H. A. Thomson.)

standing out to where the Jacob's ladder was.

A. Well, I would be just exactly the same distance as it would be from the bridge to the Jacob's ladder.

Q. And how far would that be?

A. About eleven feet.

Q. You stated that the lumber was piled against the stanchions, as I remember, following the curve of the stanchions so that the higher it went the wider it got? A. Yes, sir.

Q. Just explain that a little more, will you? I didn't quite understand that.

A. Well, sir, if you start and pile against this spacing, we will say, these bulwarks, and if you want to secure it fast you would have to put it solid against it; these bulwarks is a narrow, and the stanchions leading anglewise out, and you start to pile timber we will say from that edge up therefore you naturally got to keep it against that stanchion and make it secure, lashed, therefore the inner part will naturally follow the curve of the stanchion as it increases in height and therefore naturally increases in the surface of the top.

Q. So that the bottom of the pile of lumber was in line with the bottom of the stanchion?

A. Yes, sir.

Q. The inner side of the pile of lumber was in line with the bottom of this stanchion? A. Yes, sir.

Q. And then as you went up it kept always against it? [227] A. With the shape of the stanchion.

Q. So that between the top and the bottom of this pile of lumber on the side toward the bulwarks there

(Testimony of H. A. Thomson.)

was a vacant space just the same as between the stanchion and the bulwark?

A. Yes, sir, there has got to be a vacant space because that is the water-ways to let the water off the ship.

Q. I see. Well, you have—at the rail is there any gutter or anything like that on the deck?

A. By the rail, sir; that is the water-way.

Q. That is the water-way? A. Yes, sir.

Q. That is a little lower in the floor of the deck, isn't it?

A. That is a little lower, three inches lower.

Q. That wouldn't be enough to carry away the water then if *if* the lumber was placed right over it that three inches of depth of gutter wouldn't be enough to carry the water away is that the idea?

A. I don't quite understand you.

Q. Well, there is a gutter there; what do you call it?

A. We call it the water-ways; scuppers is the real name.

Q. There is a scupper there about three inches in depth? A. Yes, sir.

Q. Now, if you pile lumber on the deck so that it went right to the rail— A. Yes?

Q. —it would leave a space of three inches for the water to go through the scupper, wouldn't it?

A. Yes, but you couldn't pile timber against the rail because the stanchions wouldn't allow you. They go right anglewise from the top of the rail to the side where the [228] deck plank starts leav-

(Testimony of H. A. Thomson.)

ing the scupper-way about fifteen inches clear way.

Q. Well, then, the idea isn't so much to let the water run off as it is because of the position of the stanchions you have to lash to.

A. As far as the timber, yes; we can't get it up to the bulwarks.

Q. You ordered the mat—the Jacob's ladder placed there, did you? A. Yes, sir.

Q. And that was the usual place for putting the Jacob's ladder?

A. Well, that's the handiest place for all concerned.

Q. What?

A. That's the handiest place for all concerned, nearest to the duty of everything.

Q. Nearest the what?

A. The duty of everybody, sir.

Q. I see, and that would be the handiest place usually, would it, or was it just the handiest place at this special time?

A. No, that's where we always carry our ladder, practically always.

Q. That's what I wanted to know. A. Yes, sir.

Q. Now, why did you put the mat there, you ordered the mat there—why did you order it there?

A. As a rule, we always place a mat under the steps; that's the ships' fashion.

Q. On freighters? A. Yes, sir.

Q. This is a freighter, isn't it? A. Yes, sir.

Q. And always on freighters it's the fashion to put a mat there?

(Testimony of H. A. Thomson.)

A. Doesn't matter whether it's a freighter or not.

[229]

Q. Is it customary to place a mat on a freighter?

A. We generally put one as we consider it for safety.

Q. All right, and that will be the reason for ordering it placed there at that time? A. Yes, sir.

Q. You don't expect anybody to wipe their feet on it whenever they come out of a launch?

A. No; mats are never used for that purpose on board ship.

Q. How about going into a room?

A. It is generally used to prevent anybody from sliding, because we have no dirt on board ship; it's the same as this room. If it is washed every morning and you live in this room there would be no occasion for you to wipe your feet because you wouldn't pick up any dirt to wipe off your feet, but if you go up the streets it's a different thing; but not aboard ship.

Q. One of the witnesses said yesterday, I forgot just who it was, that you had mats there at the doors of the rooms to wipe your feet on. He is mistaken, eh?

A. If we had a wet deck and water on it or stand in water he would naturally have to wipe his feet and step on it for safety.

Q. And it was safety, then, in your judgment, to have a mat on top of these boards, safer than it would have been to allow the boarding officer to step on the

(Testimony of H. A. Thomson.)

top of the boards? A. Yes, sir.

Q. You hadn't seen the decks washed down that morning, had you? A. 'Oh, yes.

Q. Had you? A. Yes. [230]

Q. Were you on deck then?

A. I was on deck since four o'clock.

Q. From four o'clock.

A. Yes, as soon as we make land I got to be there; I got to take the ship in until she is in port.

Q. You took charge of her the moment land was sighted then? A. Yes, sir.

Q. But you didn't pay any particular attention to the washing down of the deck?

A. Couldn't help paying attention to the washing down of the decks.

Q. That's in charge of the bos'n?

A. Same thing as you walking down the street and seeing a car pass, you can't help paying attention; you must see; it's in front of you.

Q. But you didn't pay the same attention to it as if it were under your eye?

A. I didn't pay any attention to see whether they put three scrubs to the minute or a half a dozen.

Q. They just take a hose and splash the water around; is that the idea?

A. They don't splash it; they simply hose it down as they would a street and then they follow it with brooms to sweep down any dirt and sweep down the water afterwards. The man with the hose goes first and the brooms follows. We got to do that in many

(Testimony of H. A. Thomson.)

cases when it's bad weather and the ship may have instances, say, a week, in continuous bad seas where the decks is always wet and it becomes green and slimy and if we didn't do washing down why we would break our [231] necks on the deck.

Q. You say you bought twelve of these mats eighteen months ago?

A. Bought twelve in Melbourne, yes, sir, because these present owners bought the ship about two years ago and have to fit it up.

Q. Still got the twelve mats aboard the ship?

A. Yes, practically all there yet but—well they are all there.

Mr. OLSON.—With the exception of this one?

A. Yes, sir, with the exception of this one.

Mr. CATHCART.—When you saw the doctor come up over the side of the vessel you saw him climb over the bulwark and step on the mat; is that it?

A. Well, he didn't climb over; he did the same as anybody else. When he got high enough he put his one leg over and followed with the other and got in kind of a sitting position and stepped over on the mat and then jumped on the deck.

Q. Did you speak to him at all?

A. No, not time enough to do anything much.

Q. Was anybody stationed at or close to the Jacob's ladder where it came over the rail to receive the boarding officers?

A. Well, that's a practice we never carry out, and that's a practice I don't know that we have any law

(Testimony of H. A. Thomson.)

that we are demanded to carry out.

Q. Then there was nobody there?

A. There was plenty there but not anybody instructed to personally attend to the doctor's convenience.

Q. How near was the closest person to the place where the Jacob's ladder was that the boarding officers were to come over? [232]

A. Well, the closest person might have been only a couple of feet away, maybe two or three feet.

Q. Well, he might have been, but do you remember now?

A. Well, there were lots of them but of course it is hard to say. If you are going to state exactly it is hard to say because there was a dozen or more of the crew laying about there or near thereabouts, and it isn't such a big space, when you place a dozen men there somebody must have been there near by where the doctor come.

Q. There might have been, but there was nobody placed there—

A. Nobody especially placed there to attend to the doctor's convenience.

Mr. CATHCART.—That is all.

Mr. OLSON.—May I ask one question that may possibly be out of order, Mr. Cathcart, the comparison between the two drawings here?

Mr. CATHCART.—Yes.

Mr. OLSON.—Captain, referring to Libellant's

(Testimony of H. A. Thomson.)

Exhibit "A," which is a rough drawing placed in evidence by Mr. Cathcart on behalf of the libellant showing the bitts, I would like to ask you to compare that drawing with Claimant's Exhibit 3 in which you have the bitts shown, calling your attention particularly to the top of the bitts, which represents the construction of the bitts the more closely, your drawing or this rough drawing Libellant's Exhibit "A."

Mr. CATHCART.—I am going to object to that, if the Court pleases.

The COURT.—He can say whether that is a true representation of the fact as it exists; overrule the objection.

A. Well, sir, when I laid a ruler on the top of the bitt it [233] covered absolutely everything, we will say, an inch from the outer edge where it is rounded off. The ruler is flat; no matter what angle you take around the circumference, it lays absolutely flat on the bitt, so the top must be flat.

Mr. OLSON.—That is all.

Mr. CATHCART.—Nothing more.

Mr. OLSON.—That, if the Court pleases, is the testimony we particularly wished to have taken before the ship sailed. Now, at the next hearing, I take it that the testimony will be produced in the regular order, counsel for libellant producing their testimony as they see fit and we following with the testimony that we have. We will name a date for further hearing.

Mr. CATHCART.—All right.

The COURT.—Very well, gentlemen, the court will adjourn this case until it is called up again. [234]

[Title of Court and Cause.]

Before the Honorable HORACE W. VAUGHAN,
Judge of said Court.

Honolulu, H. T., August 27, 1918, 9:00 A. M.

Mr. VITOUSEK.—If your Honor please, in this case we represent the libellant, Doctor William F. James, who is asking for damages to be assessed against the steamship "Coolgardie." Dr. James is in the Public Health Service, and among his duties were those of boarding officer, on August 12, 1917. It was his duty on that morning to board the "Coolgardie" to give pratique so that the boat could enter the harbor. We consider that as a matter of law the vessel should have proper means of boarding, proper and safe means for the doctor to board. The doctor boarded the vessel, going up [236] the Jacob's ladder placed over a pile of lumber that was piled immediately along the length of the bulwarks. Immediately forward of that was a mat placed for the purpose to be stepped upon, as we will show, and as has been shown. The doctor stepped upon the mat, and in stepping from the mat to the deck, as we allege, the mat slipped causing him to fall and causing injuries which are permanent, and which we consider have damaged him to the extent as prayed for in the libel. The mat we consider should have been a safe way for the doctor to get on the boat. A safe means

was not provided, the mat slipping and causing him to fall to the deck, showing that it was unsafe, and the mat also was wet. And we will endeavor to show that the lumber and the deck were also wet. That fact was what caused the accident. In the last hearing in the matter Doctor James was placed upon the stand and his testimony was carried along to the point when he fell to the deck, and then we withdrew Doctor James so the libellee could continue with their case, the officers and crew of the ship being here they wanted to put their testimony on to let the ship go, to which we consented.

Mr. OLSON.—In view of counsel's statement, your Honor, I take it that it would be proper, in order that it may be before your Honor a proper conception of the situation as it exists, a statement on behalf of the libellee also. In the original libel the libellant alleged not only that there was this Jacob's ladder,—I take it your Honor is familiar with what a Jacob's ladder is; it is a ladder composed of pieces of board fastened in ropes on either side [237] so that it hangs over the side of the ship. This was attached to the port side of the vessel, and in boarding the doctor went over the bulwarks and stepped on to a pile of lumber some short distance from the top of the bulwarks, on which was this mat. In the original libel the libellant alleged that this was a loose pile of lumber, and that by reason of this loose pile of lumber and the mat, *et cetera*, an unsafe means of access on to the vessel was provided. However, upon the stand, Doctor James stated that he was mistaken

about the lumber, that as a matter of fact it was a pile of lumber that was securely lashed and level on top was comparatively straight up and down sides as the lumber was piled toward the inner part of the vessel, and that this mat was lying flat on this lumber, and when he stepped from—when he stepped to the mat and from the mat to the deck something happened that he fell to the deck, injuring his knee, as he claims, and as counsel has stated, Doctor James' testimony has covered his view of the situation up to the time of his actual falling. The testimony as to the nature of his injuries and the extent of it, *et cetera*, being left to be covered by later testimony. The testimony was taken after that, on Doctor James being withdrawn temporarily, of the officers and man of the "Coolgardie," who were still with the "Coolgardie," all of them who saw anything in connection with the accident, and that testimony is to be found together with Doctor James' testimony in the transcript which is on file in this case, and I might say that our claim is that the Jacob's ladder was placed on the side of the vessel in the ordinary way, that this pile of lumber [238] approximately two and a half or two feet wide on the top, was level, that it was some two and a half feet, possibly higher, from the deck, and anywhere from a foot to a foot and a half from the top of the bulwarks, and that this mat was lying on this perfectly flat surface, that while it was damp that dampness served to make it all the safer, to make it less readily susceptible to make it slip, and that while the deck was damp on account of having

been washed down in the ordinary course of the vessel, that there was no flowing water whatever, simply damp, that it was daylight, perfectly daylight at the time the doctor boarded the vessel, that he saw, according to his testimony, the situation and what there was, what means were provided for him, that those means were safe, and that he could in the exercise of ordinary care have descended to the deck without any accident occurring. Furthermore, that one end of the pile of lumber was so piled that there were natural steps of easy descent alongside of the bulwarks down to the deck within a foot or two of the point where he stepped on to the pile of lumber in boarding the vessel, and that if he had walked down that way he would have had perfectly natural steps to have walked down upon and had as normal and safe a mode of descending to the deck as could have been provided. I think that is practically the whole situation, so that your Honor will understand the situation. Our view of the situation is covered by the testimony of our witnesses.

Mr. CATHCART.—Listening to counsel, if the Court please, I was unable to gather whether some of his statements were [239] supposed to emanate from Doctor James or were statements of the position of the libellee. We claim the testimony of Doctor James shows that the reason of the fall was the slipping of the mat, not something happening, and we do not want the Court to understand that Doctor James, on stepping over the bulwarks and looking and seeing the situation, saw that he could get down,

(Testimony of William F. James.)

that everything was safe and that he could get down safely, of course the appearance to Doctor James was everything that was satisfactory, but the mat slipping was what caused the fall.

Mr. OLSON.—That is a matter of testimony.

Mr. CATHCART.—Yes, but from your statement it was difficult to tell whether it was the testimony or your claim.

The COURT.—I think I understand the issue, gentlemen; proceed.

**Testimony of William F. James, for Libellant
(Recalled).**

Direct examination (continued) of WILLIAM F. JAMES, for libellant, recalled.

Mr. VITOUSEK.—Doctor, the last testimony you gave was in regard to the fall you had. Do you remember that testimony? A. Yes, sir.

Q. Immediately after you fell to the deck who came to your assistance?

A. Captain Reeves; he was the customs boarding officer at the time, and somebody on the deck, I don't know who they were, some one or two of the crew.

Q. Then Captain Reeves boarded immediately after— [240] A. Immediately after me.

Q. After you. Do you know whether he was in a position to see the accident or not?

A. Well, if he came over the ladder immediately behind me, and if his head was above the bulwark at all he could have seen it. He was so close behind me I think probably he could have done so.

(Testimony of William F. James.)

Q. How long did it take to come up the ladder from the boarding launch?

A. Only two or three moments.

Q. Just a matter of seconds, then?

A. Just a matter of a few seconds.

Q. After you fell, were you conscious?

A. Yes, sir.

Q. Did you notice the position of the mat after falling? A. Yes.

Q. What?

A. As I was lifted up I pointed to the mat and remarked that the mat slipped causing me to fall, and it was then hanging over the edge of the plank.

Q. Hanging over the edge, you mean the mat—will you fix the mat the way it was hanging over, presuming that this table is the edge of the pile of lumber?

A. About one-third, I think, of the mat was lying over, but this is a brand new mat and the mat I stepped on certainly was not. You notice this mat hangs at an angle. The mat as I saw it was right down hugging the face of the plank itself, steaming wet.

Q. Before the fall you have testified that the mat was— [241]

A. Parallel with the edge of the plank.

Q. All right, Doctor, just take your seat. You say, Doctor, that Captain Reeves and someone else came to your assistance at that time? A. Yes.

Q. What did they do,—what did you do then, where did you go?

A. They helped me up, and we went up some steps

(Testimony of William F. James.)

to the captain's chart-room, I think it was his room, or the chart-room, one or the other, and I sat down on the lounge in there and immediately fainted. I don't know how long I was in the faint, but after a while I came out of it.

Q. After you came out of the faint, that is, regained consciousness, then what did you do?

A. Well, it was my duty to examine the crew,—I hadn't done that yet,—so I asked the captain to have them all up on that deck, and I got out to the doorway and examined them all there, and then in the meantime I think Reeves had filled out nearly all of my books, my record-book, and I finished it and signed it, and then we started to leave the ship.

Q. In starting to leave the ship, did you go without any assistance, Doctor?

A. No, Reeves and Brown, I think, the immigration inspector, and the captain of the vessel helped me down; they call came down with me. I was assisted down the steps.

Q. And how did you leave the vessel?

A. The captain was with us, and we left the vessel exactly the same way as I came over, by the mat, at least the position where the mat was.

Q. They helped you on? [242]

A. They helped me on to the pile of lumber.

Q. And then? A. And then over the side.

Q. And on to the launch? A. Yes.

Q. You say the captain helped you down and came down with you?

A. He was with us, and assisted me, too.

(Testimony of William F. James.)

Q. And you went back the same way?

A. Exactly the same way that I came on to the boat.

Q. Was there anything said as to any other means of getting up on to the pile of lumber?

A. Nothing at all.

Q. Did the captain say anything about going up at the end of the pile of lumber?

A. No, he didn't mention it; in fact he helped me up on the planks the same way that I came over.

Q. Did you notice whether there was any other means of getting up on the pile of lumber?

A. No, I did not.

Q. What was the nature of the injuries to your knee?

A. Well, the knee, of course, became inflamed and swollen considerably. First of all there was acute synovitis, with a good deal of pain, naturally.

Q. At the time you fell was there pain in the knee? Explain the fall you had.

A. Oh, yes, certainly; it was the pain that caused me to faint.

Q. Intense pain?

A. It was the intense pain that caused me to faint; naturally the knee did not begin immediately to swell, but the pain persisted.

Q. How long did that pain persist after the accident?

A. Well, in varying degrees for months; in fact it still is [243] painful at times.

Q. At first did it pain you continuously?

(Testimony of William F. James.)

A. I would explain that in an injury like that, the first is an acute condition, then there is considerable inflammation and pain and swelling. Then that acute condition gradually subsides. In this case it was put down first merely as acute synovitis, but later the X-ray showed there was also arthritis; that is an injury to the knee-joint structure itself.

Q. Explain what you mean by acute synovitis?

A. Just behind the knee-cap is a sack, a membranous sack called the synovial membrane, and it is the acute inflammation of that sack causing a large amount—there is always a little fluid in that sack; its object is to lubricate the joints, and in an injury the fluid increases enormously; that is usually the cause of the swelling of the joints. That is an inflammation simply of the synovial membrane, but an injury to the joint structure itself is known as arthritis. It is also an inflammation, or the inflammatory condition, that cannot be told by any physical examination; it was not shown until the X-ray picture was taken.

Q. Then, at first, Doctor, it did not appear that it was arthritis? A. No.

Q. When did that first appear?

A. When the X-ray was taken it showed it.

Q. When was that?

A. It was nearly a month—just about a month, I think, after the accident happened.

Q. Did you do anything for the knee?

A. Yes, I did what is usually done for synovitis; that is, [244] strapped the knee as tightly as I

(Testimony of William F. James.)

could stand it so as to render the joint as immovable as possible and to bring also some pressure to bear on the joint.

Q. What did you do with regard to being on or off your feet in regard to the using of the knee?

A. Of course naturally I walked as little as possible and used it as little as I possibly could.

Q. Is that the customary treatment for that condition? A. Yes.

Q. You say about a month after, you discovered that it was arthritis? A. Yes.

Q. What brought that about, how did you happen to find that out?

A. By the X-ray. Doctor Trotter ordered me to go to Doctor Sinclair for examination and an X-ray, and I did so, and the plate showed arthritis, and then Doctor Sinclair prescribed a form of treatment for it and told me to lay up for a while, which I did.

Q. How long?

A. I think it was seventeen days, sixteen or *seven* days that I kept to the house, not in bed all the time, but lying down nearly all the time with my knee elevated and following the treatment that he prescribed.

Q. And did you have pain during that time?

A. Yes.

Q. Explain, Doctor, the structure of the knee-joint in general.

A. The patella or knee-cap is a circular bone in front of the knee. Behind that, as I explained just

(Testimony of William F. James.)

now, is the synovial sack, the synovial membrane, which rests between this bone and the joint structure itself. Then the two bones that [245] form the structure,—form the joint are partly interlocked, there are depressions in one and projections in the other. Between these two bones is the cartilage. The cartilage is—it was the cartilage that was shown to be torn.

Q. What are the names of these two bones?

A. The femur and the tibia.

Q. Is the femur the thigh bone?

A. Yes, sir.

Q. And the tibia? A. The shinbone.

Q. Is there not another bone?

A. The fibula, but that does not enter into the joint structure.

Q. Between the two bones, as you say then, there is the cartilage?

A. Yes, there is cartilage; the cartilage is peculiar in the body, in that it has no vascular system. It has no blood vessels and the consequence is when there is an injury to the cartilage it very seldom repairs like other portions of the body.

Q. The X-ray, as you say, did that show an injury to the cartilage structure?

A. Yes, that was my interpretaion of it, and I think Doctor Sinclair's too.

Mr. VITOUSEK.—Well, that will show later when he testifies.

Q. In regard to the injury to the knee-joint, Doctor, what inconvenience, if any, would that cause you in walking about?

(Testimony of William F. James.)

A. Well, at the present time that knee is slightly larger than the other one; I cannot bend it to the same angle that I can bend the other one; for instance, an every-day occurrence, I cannot bring that knee up to the edge of the chair to put on a sock like I do the other; I have to stoop down to the floor to put on a sock, with that knee. I can walk [246] around slowly without discomfort, but I have to watch my step. The least misstep or twist causes acute pain in the joint and may cause me to fall.

Q. It may cause you to fall?

A. Yes, sir, it may cause me to fall.

Q. Have you ever been caused to fall through that? A. Yes, sir, once.

Q. When was that?

A. I don't know the date; it was in the early part of September.

Q. How was the fall caused?

A. I was on Pier 8 where they are making a concrete platform. The only place to go on to the pier was at the corner of the concrete nearest the road. The concrete was about fourteen or fifteen inches, I suppose, above the earth, and on stepping over that I put this foot on that concrete and on getting my weight of my body on it, it was too much for it and there was such an acute pain that I fell over on to the concrete itself.

Q. Did you get up?

A. Yes—well, I was assisted up.

Q. You were assisted up? A. Yes, sir.

Q. And where were you taken then?

(Testimony of William F. James.)

A. There were many people on the pier itself; it was during that time when there were so many people fishing for those fish that were so numerous there, but I think Captain Lanky was not so far off, and he ran and assisted me, and I think Captain Curtis, the assistant harbor master, also.

Q. And they helped you up?

A. They helped me up.

Q. And where did they take you? [247]

A. They helped me into the office; it was only about sixty or seventy-five feet away.

Q. Were you having pains at that time?

A. Yes.

Q. Was it more than you ordinarily have, it was more intense?

A. Oh, yes, certainly, any twist causes a pain that even now will usually persist for a day or a week, according to the extent, of course, of the twist or—

Q. Yes, did you faint then?

A. No, I laid down immediately on a lounge in there but did not faint.

Q. You say as you were stepping out on the pier you fell? A. Yes, as I was stepping up.

Q. Well, was it because you were stepping up?

A. Well, when I felt it more especially is when it is necessary to put the weight of my body on the knee in a bended position. In getting up and down stairs, for instances, I invariably have to use, and do use, the balustrade, and getting in and out of bed or launch is difficult, without assistance. Whenever the weight of the body is put on that knee and it is

(Testimony of William F. James.)

in a bended position is particularly when I feel the pain.

Q. Is it likely to cause you to fall?

A. It depends on the height of the step; I wouldn't try to step over the depth of an ordinary step without assistance.

Q. And if you did?

A. And if I did probably it would.

Q. Referring again to this accident when you were stepping up on the pier, did you stumble over any thing?

A. No, there was nothing to stumble over.

Q. It was due, then, to the condition of the knee?

[248]

A. Due to the knee giving way, the pain.

Q. How long—this accident took place the 12th of August, you stated, 1917? A. Yes.

Q. And what is the condition of the knee at the present time?

Mr. OLSON.—That has been fully explained, and I object to it on that ground, if your Honor please.

Mr. VITOUSEK.—I want to show your Honor in regard to this, whether it is permanently injured or not.

The COURT.—I understand; overrule the objection. Explain its condition now; answer the question.

A. As I stated just now, the knee is slightly larger in circumference than the other knee. I can walk around slowly without much discomfort. The knee is nearly in a straight position when you are walk-

(Testimony of William F. James.)

ing, but I have to continually watch my step. The least knock or twist or stamping my foot would cause pain. I can walk, as I say, slowly, without much discomfort, but I cannot walk too far or too fast.

Mr. VITOUSEK.—Knowing the conditions now, Doctor, and treating it as you have, in your opinion is it chronic at this time or not, the condition?

A. Yes, in my opinion it is chronic. It is a little over a year now since the accident happened.

Q. What do you mean by chronic, that it is permanent?

A. That it is probably permanent; I think undoubtedly it would be.

Q. That it undoubtedly would be permanent?

A. Yes, that it undoubtedly would be permanent; yes.

Q. You have stated that you are acting assistant surgeon of the public health service?

A. Yes, sir. [249]

Q. What is the nature of that position?

A. You mean, what are my duties?

Q. You have explained, I believe, your duties. I mean, what is the tenure—is it civil service or not?

A. No.

Q. I mean, what is the nature of the position with the Government?

A. Well, an acting assistant has, of course, to be a graduate of a recognized college to—

Q. Medical college?

A. Recognized medical college, but he is not in the

(Testimony of William F. James.)

regular service, that means to say that he is appointed by the Secretary of the Treasury from the recommendation by the surgeon-general of the service, but he can be dropped at any moment; it is not necessary to give him any notice more than to say that his services are no longer required. He is not in the regular service. A regular service man is taken care of by just being suspended for a while during sickness, but an acting assistant is different. There are about two hundred and fifty, I think, acting assistants in the service and a great number of these are taken on and off as they are required.

Q. You have previously stated, I believe, the last time you were on the stand, that part of your duties as acting assistant surgeon were to board incoming boats and give practise; is that correct?

A. Yes, sir.

Q. Are you able to do that now?

A. No, I have not boarded since the accident.

Q. What effect would that have upon your position?

Q. Well, I am very much afraid that I might be told that my services would be no longer required if I cannot do the [250] duties that are required of me. As a matter of fact, the other officers in the service have been doing my boarding now for over a year until Doctor Pratt came the other day, but I have not heard anything along that line yet.

Q. But it might be at any time?

A. It might be if the commanding officer were to—the local one, I mean here, were to state that I

(Testimony of William F. James.)

could not perform all the duties that would be required of me there would be nothing for it but to let me out.

Q. Is the commanding officer here likely to be permanent?

A. No, he is not. He is serving his second regular term now. As far as Doctor Trotter is concerned, I do not feel much alarm, because he has been very good to me indeed in that respect, but I don't know who might follow him or what his ideas may be.

Q. Reverting back to the condition of the knee, Doctor, aside from the condition of the knee itself, has there been any other effect upon your general health due to the condition of the knee?

A. Yes. Well, as far as the knee itself is concerned there is always the dread of a further injury. Any serious slip that would give it a very severe twist or wrench might mean very serious consequences. Then I have always led a very active life all my life, and since I have not been able to board I have a sedentary occupation in the office and it has affected my health quite a little.

Q. From your experience as a physician and from your knowledge as a physician, Doctor, if you change from an active life to one of inactivity is it likely to affect the health of any person? [251]

A. Yes, sir. Well, in my case for the past six or seven years I have always gone home to lunch, that meant to go to Quarantine Island, not in a machine, I have always walked, which entailed a walk of a

(Testimony of William F. James.)

little over a mile every day at noon. Then, of course, the boarding itself is considerable exercise, and a good part of my duties were out of doors. None of these have I done since the accident. I have not been able to take that walk at noon, and I do nothing but office occupation the past year. The consequence is that I have become very constipated, something I never knew before, and that has led to hemorrhages, which have bothered me a good deal.

Q. You spoke, Doctor, of pain in the knee when you might give it a twist and that it would last for day or two. Is that simply a small annoying pain or an intense pain?

A. No, it is a small annoying pain sufficient to cause me to limp for two or three—

Q. You wouldn't call it a small pain if it caused you to limp?

A. Well, it is an annoying pain sufficient to cause me to limp.

Q. At the time you fell what kind of a pain was it?

A. Oh, it was very acute, and for several months the pain was very acute, in any movement at all.

Q. If, through the condition of the knee a person is caused to fall, would the pain be acute?

A. Yes, then it would be acute.

Mr. CATHCART.—There were some matters brought out by witnesses for the libellee in rebuttal; it would properly come in rebuttal, and I don't see any use of the witness going now and recalling him later; we can do it now.

(Testimony of William F. James.)

The COURT.—All right. [252]

Mr. VITOUSEK.—At the time you boarded the vessel, did you have on dark glasses?

A. No, I am very positive I did not have dark glasses. I have got—these are the only dark glasses I have ever worn, and they are smoked glasses and do not show color at all; they just look as if the sun is behind a cloud, and I got these glasses, as I can prove by Sanford's records, after the accident.

Q. After the accident happened?

A. After the accident happened, and these are the only glasses I have ever worn which are in any way dark at all, and they are not known as smoked glasses, they are known as Crook's glasses, and it simply looks as if the sun was behind a cloud.

Q. You have worn those glasses since the accident?

A. Since the accident I have worn these; yes, sir.

Q. Regularly or just occasionally?

A. No, I never wear them except I am out on the water somewhere, or coming back and forth from the island.

Q. Before the accident, Doctor, did you have any trouble boarding vessels, that is, due to your physical condition?

A. None whatever. In fact, I always prided myself that I could go up the side of a ship about as quickly as any other officer in the service.

Q. How old are you, Doctor?

A. I have been doing it for fifteen years now.

Mr. OLSON.—That is not in answer to the ques-

(Testimony of William F. James.)

tion you asked; you asked how old he was.

Mr. VITOUSEK.—Well, he was going on, I believe, from the previous question. How old are you, doctor? [253]

A. 57; 58 in November.

Q. Have you ever had any,—previous to the accident has there ever been any trouble that you think would be due to your age, I mean physical inactivity?

A. None whatever; I have been boarding vessels for fifteen years and only had one slight mishap that might have been an accident, and that was on a transport once, a rung of the ladder broke, but even then I didn't fall.

Q. What is your weight?

A. 152, I think it is.

Q. What was it at the time of the accident?

A. About the same thing; I don't think I have changed much.

Q. You were no heavier at that time?

A. I don't think so; I have not weighed myself lately, but I hardly think so.

Q. And your height, Doctor?

A. Five feet six, without my shoes.

Cross-examination of WILLIAM F. JAMES.

Mr. OLSON.—I suppose in the fifteen years' experience that you have had in boarding vessels you have gone up the side of vessels and ships ladders many many times? A. Oh, yes.

Q. It is the usual way, is it not, of going aboard, the usual means provided for getting aboard a ves-

(Testimony of William F. James.)

sel that does not happen to be a passenger vessel?

A. Except passenger boats, passenger boats generally do have the gangway down. [254]

Q. And except for passenger boats, the Jacob's ladder is the ordinary way? A. Yes.

Q. And the Jacob's ladder on the "Coolgardie" was the ordinary kind of Jacob's ladder?

A. Yes, sir.

Q. The "Coolgardie" was not a passenger vessel?

A. No.

Q. A freighter? A. A freighter.

Q. Was the Jacob's ladder fastened in an unusual place on the "Coolgardie"?

A. No, the only unusual place on the boat would be very far to the stern.

Q. But this was not far to the stern, was it?

A. No, it might get into the propeller.

Q. Now, this mat; you say you looked at the mat after you had gotten up from the deck?

A. Yes.

Q. And you say that it was hanging about one-third off the edge of the lumber pile?

A. I think it was about a third, yes.

Q. And instead of standing at an angle it practically hung straight down, that is, the part which was overhanging the lumber pile? A. Yes.

Q. Do you remember whether it was the corner of the mat or the end of the mat or side of the mat which was hanging over?

A. Like you had it there, at an angle.

Q. Yes, we will assume that as this mat is placed

(Testimony of William F. James.)

upon this table that the left end of this mat is toward the ship's [255] house?

A. That was the right end toward the ship's house.

Q. Yes, the right end towards the ship's house and the left end toward the stern or bow, which?

A. I am not sure; I think the stern.

Q. Well, in any event, now, for the purpose of the record, Doctor, as you are facing the bow of the vessel from some position on the deck of the vessel, facing the bow, which is the port side and which is the starboard?

A. The right hand is the starboard and the left the port, as you are facing the bow.

Q. Yes, the starboard side being the right side and the port side being the left side.

A. Yes, sir.

Q. Yes; now, was this Jacob's ladder fastened on the bulwarks toward the fore part of the vessel or toward the stern of the vessel?

A. Well, I can't quite tell that.

Q. Well, was it forward of the house or astern of the house?

A. That I don't remember; you see the house is in the center, and I am not a seafaring man, and I didn't notice which way the vessel pointed.

Q. I see. All right. Now, do you remember whether it was the left end corner of the mat which was hanging over the lumber pile or the right?

A. I am not sure of that.

The COURT.—Was this Jacob's ladder on the

(Testimony of William F. James.)

starboard or port side of the vessel?

Mr. OLSON.—The port side, wasn't it?

A. If you can tell me which side from some of the crew's [256] testimony, I can tell you the position.

MR. OLSON.—Port side.

Mr. CATHCART.—I think it was the port side.

A. Well, then, that end of the mat must have been the left end of the mat then nearest the pilot house.

Mr. OLSON.—And away from the bow?

A. Yes.

Q. You remember that now from your recollection of what took place when you got up from your fall; it was then that you saw *thea* the mat was so hanging over the pile of lumber? A. Yes.

Q. And you have at all times had that clear and distinct in your mind?

A. When a man meets with an accident like that, suddenly, he gets the impression immediately as to the cause of the accident.

Q. What I want to get at is, Doctor, ever since the accident, has that been clear and distinct in your mind as a recollection? A. Yes, clearly.

Q. There has been no time that you have forgotten about that, you observed the mat when you were raised from the accident and saw the edge hanging over the lumber pile, and that it was the corner towards the house?

A. I am not sure that it was the corner towards the house. I said the left-hand side of the mat was towards the house, but which corner was hanging

(Testimony of William F. James.)

down I am not quite positive.

Q. Yes, aside from which corner it was, the other details you have at all times remembered distinctly since the time of the accident? [257]

A. Yes, sir.

Q. And you distinctly remember it when you testified here on the stand before, you had that clear in your mind at that time? A. Oh, yes, yes.

Q. Your recollection of your observation of that mat when you arose from that fall is clear in that you are able to say that it was an old mat, an older mat that this mat which is in evidence in this case? This is the mat which was placed in evidence that you saw here on the former hearing.

A. Yes, that is the mat that was placed in evidence.

Q. And your recollection is so clear now at the present time that you are able to state that the mat which was on that lumber pile was older and more worn than this is because it was hanging down flat over the side of the lumber pile when you arose from the fall?

A. Not only because it was hanging down, but I am positive that it was more or less frayed.

Q. Otherwise a mat of a similar character to this mat? A. Oh, it was a cocoa mat.

Q. And this is a cocoa mat, this exhibit, is it not?

A. Yes.

Q. And you could not have, in view of your distinct recollection on this point, have ever testified then or said, whether, in this courtroom or outside

(Testimony of William F. James.)

of the courtroom, that you did not remember the position of the mat after you fell, you could not have said anything like that?

A. Why, no, I never have said anything like that.

Q. And you could not have said either here in the courtroom or anywhere else, after the accident, that you did not observe [258] the mat at all after you fell? A. No.

Q. And therefore, Doctor, calling your attention to page 23 of the transcript of the record in this case, I call your attention to this question which was addressed to you:

Question: Now, in what position was the rug in after you fell to the deck before anybody approached you?

Answer, by you: I don't remember at all.

Question: Did you observe it at all?

Answer: No.

Question: You did not?

Answer: No.

Question: Do you know whether the rug was on top of the lumber pile at all from the moment you left the lumber pile and landed on the deck?

Answer: Well, I didn't observe the mat at all after I fell.

A. I don't think that can be correct.

Q. You don't think that can be correct, you did not so testify?

A. I am positive I pointed to the mat as I got up.

Q. And made a remark about it?

A. And made a remark about it.

(Testimony of William F. James.)

Q. To whom?

A. Well, it was not addressed to anybody particularly.

Q. Who was with you at the time?

A. Captain Reeves was there, and some of the crew, I am not sure whether Mr. Brown was there or not at that time.

Q. Mr. Brown being the Immigration Boarding Officer?

A. Yes. I think he must have been there, but I am not sure whether he was down on the deck.

Q. You fainted, did you, when you fell to the deck? [259]

A. No, I did not faint until I was up in the chart-room.

Q. I see; after you had been assisted up to the chart-room?

A. Yes, after I had been assisted up to the chart-room.

Q. But you were slightly dazed, were you not?

A. Yes.

Q. Have you ever been subject to faints before in your life?

A. No. When I used to have malaria I fainted, but not from other causes.

Q. Not in Honolulu prior to this accident?

A. No,—before when I was sick.

Q. In Honolulu? A. Yes.

Q. Where?

A. On Quarantine Island. I had the grippe once,—I think it was the grippe,—and I tried to get out

(Testimony of William F. James.)

of bed too soon. I was about to walk, and fainted.

Q. Did you faint at any other time here in Honolulu? A. No.

Q. You never have?

A. Not that I know of.

Q. Are you sure, Doctor?

A. Yes, I am quite sure.

Q. Where is that X-ray plate taken of your knee?

A. In Doctor Sinclair's office.

Q. Have you had more than one X-ray photograph taken? A. Yes.

Q. By whom? A. By Doctor Sinclair.

Q. At the same time? A. He took two then.

Q. Two then, and later? A. Two later.

Q. How much later?

A. Oh, I don't know the date of the second ones.

Q. About how much later?

A. I can find out.

Q. Well, have you any idea at all? [260]

A. Well, no, I think about six weeks, or it may have been two months.

Q. That is what I wanted to get at, six weeks or two months after the first photographs were taken.

A. Yes.

Q. And where are those plates?

A. They are in the office; I did not bring them.

Q. When did you first examine the two plates that were taken originally of your knee?

A. Immediately after they were taken.

Q. And after that date, after that examination by you, how long after that did you examine them

(Testimony of William F. James.)

again? A. The plates?

Q. Yes.

A. Oh, I cannot say; I have looked at them once or twice since then, and other doctors have looked at them as well.

Q. The second set of plates taken some six weeks or two months later by Doctor Sinclair—

A. Yes.

Q. —when did you examine them?

A. Well, of course I looked at them directly I received them; that was a few days after they were taken, after they were developed.

Q. Yes, and upon examining them you returned them to Doctor Sinclair, did you?

A. Beg pardon?

Q. Upon having examined them you returned them to Doctor Sinclair?

A. No; the plates are all the property of the Government. Doctor Sinclair takes the plates at the order of Doctor Trotter and they are a part of the office records over there. [261]

Q. In Doctor Sinclair's official office?

A. In Doctor Trotter's office.

Q. They are all in Doctor Trotter's office now, are they?

A. Yes, except that I have two of them here.

Q. When did you last examine any of these plates?

A. I have not looked at them for several months, now.

Q. Have you had any X-ray plates taken of your

(Testimony of William F. James.)

knee since the second set was taken by Doctor Sinclair? A. No.

Mr. OLSON.—No further questions.

Mr. CATHCART.—That is all, Doctor. [262]

Testimony of Frank J. Loncke, for Libellant.

Direct examination of FRANK J. LONCKE, for libellant, sworn.

Mr. VITOUSEK.—What is your name?

A. Frank J. Loncke.

Q. What are you doing, what is your occupation?

A. Beg pardon, sir?

Q. What is your occupation?

A. I am pilot and engineer, United States Quarantine Service, sir.

Q. And what are your duties in connection with that?

A. I am in charge of all the launches in the quarantine service, and I am taking the doctors out for boarding purposes to all incoming vessels.

Q. How long have you been in that service?

A. Well, this is the second time I have been in the service, and this February the 15th, 1916, is when I came back the second time.

Q. Were you in the service here before that time?

A. Yes, sir; something like six years; I don't know the date exactly, but six years ago I was in the service again.

Q. Do you know Doctor William F. James, the libellant in this action? A. Yes, sir.

Q. Is he in the Public Health Service?

(Testimony of Frank J. Loncke.)

A. Yes, sir.

Q. Have you ever taken Doctor James out to board vessels?

A. Yes, sir; I have taken Doctor James out several times.

Q. Have you taken him out before August 12, 1917? [263]

A. I have taken Doctor James out every day since I have been in the service.

Q. Since you have been in the service?

A. Yes, sir.

Q. And in taking Doctor James out to these boats, have you been in a position to see him board the boats? A. Yes, sir.

Q. What is his ability to board these boats?

A. None better, sir.

Q. None better? A. No, sir.

Q. Did he ever show his age before 1917, boarding boats?

A. No, sir; I seen Doctor James go up the side of vessels fully thirty feet above the water's edge and get up there quicker than any of them.

Q. He was always very agile in getting aboard?

A. Yes, sir, very.

Q. Did he ever have any trouble in getting on or off the launch? A. No, sir.

Q. Did he ever have any trouble in getting back on the launch? A. No, sir.

Q. Have you seen Doctor James since August 12, 1917? A. Is this after the accident?

Q. Yes, after the accident.

(Testimony of Frank J. Loncke.)

A. Yes, sir, I have had occasion to see Doctor James since.

Q. You were not with Doctor James at the time of the accident?

A. No, sir; I was off duty.

Q. But you knew about the accident?

A. I heard about the accident when I came back on duty on Monday morning.

Q. And have seen him since the accident? [264]

A. And have seen Doctor James since, yes, sir.

Q. What has been, as you have observed it, what has been his condition since the accident?

A. Doctor James has aged considerable since the accident, sir.

Q. Has he been able to go about as he had before?

A. No, sir, entirely different, sir.

Q. Did you ever see Doctor James fall since the accident?

A. Yes, sir, I have seen Doctor James fall.

Q. When?

A. We had the "Marion Chilcot" outside; she's a vessel belonging to the Associated Oil Company, and it's my duty to call the doctor on duty, notifying him that I am going over with the launch to take him out to board the vessel, and I went down to Pier 8, and I generally call up the office before going over, and then by the time I get to Pier 8 the doctor gets there about the same time as I do, sometimes I get there ahead and I wait, and Doctor James came out of the office, and down at Pier 8 they are building a wharf over there, and this was the time when the "Marion

(Testimony of Frank J. Loncke.)

Chilcot'' was reported and we were going to it, and I saw Doctor James coming along, and I was aboard the launch and could see him coming along and as he stepped *and as he stepped* from the fill on to the concrete wharf he fell forwards, and I saw Captain Curtis, the assistant harbor master rushing over there and he turned him over on his back, and by that time I got over there, and as far as I could see Doctor James was in a fainting condition, and I picked him up, and in the meanwhile somebody shouted to the office that something happened to Doctor James and a boy from the office came along and between the two of us we carried Doctor James into the office. [265]

Q. Did he stumble over anything?

A. I don't think so, sir.

Q. Nothing that you saw?

A. I didn't see anything to stumble over; no, sir.

Q. How does he walk in going about his work?

A. I notice Doctor James walks with a limp now.

Q. Has he been on board your launch since then?

A. Doctor James has been aboard my launch about three times since the accident, I believe, because I have told Doctor Trotter myself that I didn't consider it safe—

Mr. OLSON.—I object to that, what he said to anybody else.

Mr. VITOUSEK.—Just what I asked you, Captain. You say he has been aboard about three times since then? A. About that time; yes, sir.

Q. Now, in regard to his getting on board, did he go as he did before?

A. No, sir, no sir; Doctor James was entirely dif-

(Testimony of Frank J. Loncke.)

ferent. I didn't feel right in taking Doctor James out because I didn't think it was safe to take him out. I had to take him out once to board a Chilean vessel, a South American vessel, that came in here, and Doctor Trotter told me to—

Mr. OLSON.—Just a moment, I object, your Honor.

A. Excuse me. I had to take Doctor James out on account of him speaking Spanish, and there wasn't anybody on board who could speak Spanish, as far as I understand.

Mr. VITOUSEK.—You say you noticed that he has aged considerably? A. Yes, sir.

Q. Have you noticed anything in his ability to get around? A. It is entirely changed, sir.

Q. How do you mean, entirely changed? [266]

A. He is not as active, not like he used to be before when he would go right along and go right up the ladder. Now he hesitates considerable before he puts his foot down.

Mr. VITOUSEK.—That is all, Captain.

Cross-examination of FRANK J. LONCKE.

Mr. OLSON.—Mr. Loncke, about how long ago is it since that Chilean vessel was in port?

A. I would have to look up my log for that, sir.

Q. Well, approximately?

A. I couldn't even tell you that.

Q. Was it this year? A. Oh, yes, this year.

Q. Since January of this year? A. Yes, sir.

Q. So that it was after the accident on the "Coolgardie?" A. After the accident; yes, sir.

(Testimony of Frank J. Loncke.)

Q. And in what capacity did he go aboard, as the health officer?

A. As the health officer, yes, sir, because it was a question of fumigating, and as far as I understood there was nobody over there could speak enough English to make them understand that they would probably have to fumigate before they could come in port.

Q. And he went aboard as boarding officer?

A. Yes, sir.

Q. Any other case of his boarding vessels that you know of, since the accident?

A. No, not that I remember, sir.

Q. Are you sure? [267]

A. There was one time that we went from Pier 8 to Pier 15 to a steam schooner that was lying there and Doctor James was sent over to take a sample of the water in the water tanks of the ship.

Q. But not boarding the vessel in the ordinary way?

A. Not boarding as I know of, although I would have to look in my ship's log to make sure. I couldn't tell you for a fact whether he has or not, sir.

Mr. OLSON.—That is all.

Redirect Examination of FRANK J. LONCKE.

Mr. VITOUSEK.—Captain Loncke, you stated that the doctor boarded this—what was it, a Chilean boat?

A. A Chilean vessel, yes, sir; I believe a Chilean vessel, a South American vessel.

(Testimony of Frank J. Loncke.)

Q. Do you know whether there had been other public health officers on board previous to that?

A. Yes, sir; one officer went on board previous to that.

Q. And Doctor James was called then to interpret? A. Yes, sir.

Q. Well, how did he get on board, by a gangway or Jacob's ladder, Captain? A. Gangway, sir.

Mr. VITOUSEK.—That is all.

Mr. OLSON.—No further questions. [268]

Testimony of Lewis B. Reeves, for Libellant.

Direct examination of LEWIS B. REEVES, for libellant, sworn.

Mr. VITOUSEK.—What is your name?

A. Lewis B. Reeves.

Q. And your occupation, Mr. Reeves?

A. At present, Captain, United States Army.

Q. How long have you been such?

A. Since June 1st.

Q. Before that time what was your occupation?

A. I was boarding officer, United States Customs, Honolulu.

Q. What was your occupation on August 12th, 1917?

A. I was at that time boarding officer, United States Customs.

Q. How long had you been in that position, in that occupation, previous to that?

A. I have been in the Customs since 1899, and have been boarding officer since February—let's see;

(Testimony of Lewis B. Reeves.)

no, it was 1909 when I joined the Customs, nine years ago, and I was boarding officer since 1912, along in the summer I believe it was.

Q. Do you know Doctor William F. James?

A. I do.

Q. How long have you known Doctor James?

A. Ten years.

Q. And what was his occupation?

A. Why, he was the boarding doctor for the United States Marine Service at the port of Honolulu.

Q. Were you on duty on August 12th, 1917?

A. I was.

Q. Did you board the "Coolgardie" on that day?

A. I did. [269]

Q. About what time?

A. About a quarter to seven in the morning.

Q. About a quarter to seven in the morning?

A. Yes, sir.

Q. Do you remember what day of the week August 12th, 1917, fell on?

A. It was on a Sunday morning.

Mr. CATHCART.—Did you say a quarter to seven? A. About a quarter to seven.

Mr. VITOUSEK.—How did you go out to the "Coolgardie?"

A. In a launch, the "Water Witch," the Customs launch "Water Witch."

Q. Who was on the launch with you that morning?

A. Doctor James, an Immigration man named Brown, and the operator.

Q. The operator of the launch? A. Yes.

(Testimony of Lewis B. Reeves.)

Q. Who boarded the—did Doctor James board the "Coolgardie?"

A. It is the courtesy of the port, and the custom of the port to allow the doctor to board first.

Q. Then Doctor James boarded the "Coolgardie" first on that particular day?

A. On that particular day.

Q. Who boarded after Doctor James?

A. I did.

Q. And after you? A. Brown.

Q. How did you board the "Coolgardie?"

A. By a Jacob's ladder let down from the rail forward of the break, towards the forward end of the ship.

Q. What do you mean by the break?

A. In this particular case it means an end of the upper deck being brought to an end before it reaches the bow of the ship. [270]

Q. Do you remember which side of the vessel the Jacob's ladder was on? A. It was the port side.

Q. Forward of the break?

A. Yes, sir; that is, forward of the midships.

Q. Forward of midships, towards the bow?

A. Yes, sir, towards the bow of the boat.

Q. About how high was the "Coolgardie" out of the water, that is, from the water to the top of the rail? A. I would say not more than ten feet.

Q. About how high is the launch out of water?

A. About three feet.

Q. Then you would have to climb a matter of seven feet, about? A. Yes, about that.

Q. How long would it take you to get aboard—to

(Testimony of Lewis B. Reeves.)

climb that distance, how long did it take you that day?

A. My climb on that particular day was a matter of a very few seconds. I am no child and have been in that business for some time, and the matter which I saw happen in front of me caused me to be more in a hurry than I would be otherwise.

Q. Now, Doctor James went over the rail before you that day? A. Yes.

Q. Did anything happen to Doctor James?

A. As I started up the ladder I heard a thump, and my impression was that something had happened to Doctor James, and I scrambled up this ladder as quickly as I could, and as I climbed over the rail I saw Doctor James lying on the deck.

Q. Was he lying on the deck?

A. He was not prostrate; he was seemingly on his fore arms, resting on the deck, and on his knees.

[271]

Q. What, if anything, was under the Jacob's ladder?

A. There was a pile of lumber under the rail, on deck.

Q. About how wide was that pile of lumber?

A. Oh, I should say three feet, possibly four.

Q. Did you notice the length of that pile of lumber?

A. I know it extended along under the rail fore and aft for some distance; I didn't notice particularly.

Q. Was there anything on that pile of lumber?

A. A coir mat was lying on it.

(Testimony of Lewis B. Reeves.)

Q. Where was that mat lying?

A. About opposite the Jacob's ladder.

Q. After you went over the side of the ship what did you do?

A. I stepped on this lumber and jumped down on deck.

Q. Stepped on the lumber and jumped to the deck?

A. Yes, to give assistance to Doctor James.

Q. Did you help Doctor James up? A. I did.

Q. Did you at this time notice the position of the mat?

A. My attention was called to it by Doctor James saying in a very feeble voice, "I tripped over that mat."

Q. And did you then look at the mat?

A. I noticed the mat then particularly.

Q. What was the position of the mat when you saw it.

A. It was hanging—well, I should say a part of it, I wouldn't say how much, maybe a third or maybe a little more over the edge of the lumber and hanging down.

Q. Was the mat wet or dry?

A. I would say it was wet.

Q. What would make you say it was wet?

A. Well, apparently they had just washed down decks; the decks [272] were very wet, and I am of the impression that I took hold of that mat either on jumping down on deck or getting off the ship, I am not sure which, that is, I put my hands on it to get up on the lumber or to jump down, I don't re-

(Testimony of Lewis B. Reeves.)

member what time it was that I had my hands on the mat but some time either getting aboard or leaving the ship.

Q. Can you say positively that that mat was wet?

A. Well, I wouldn't say positively; I have that impression, is all.

Q. Very wet or just damp?

A. I would say it was quite wet.

Q. Quite wet?

A. That is the impression I have, but the exact state of it I wouldn't swear to.

Q. Assuming that the edge of this table is the edge of the lumber, and this being the mat, about what position was it in?

A. If I may? Well, about that, I would say.

Mr. OLSON.—Well, to have that described so that it will be in evidence, that mat as shown by the witness was hanging directly over, not cross or cornerwise, but longitudinally, about the same distance on either side of the mat.

A. I would say that is about the position of the mat as I recollect it.

Mr. VITOUSEK.—Might it have been in this position, cornerwise?

A. I don't think so, because when I gained the impression of that mat it was when I was leaving the ship. I wouldn't say positively but my impression is that it was hanging almost straight over, as I placed it.

Q. How was it hanging, sticking out straight or hanging down?

A. Hanging down in that manner. ' [273]

(Testimony of Lewis B. Reeves.)

Q. Did you notice the condition of the mat, whether it was an old or a new mat?

A. Well, it had been used apparently, it was not bright as a new mat would be.

Q. Was it similar to that mat?

A. I would say it was similar to that mat.

Q. Would you say it was an older mat than that or the same?

A. Well, as I remember it, it was a mat similar to that, a mat of that condition.

Q. Was the deck of the ship where you jumped down, wet? A. Quite wet; yes, sir.

Q. Was the lumber pile wet on top?

A. I don't recollect particularly.

Q. Do you remember how you got down from the lumber pile, did you jump down?

A. I put my hand down on the lumber, or on the mat, and jumped down on deck.

Q. You jumped down on deck? A. Yes, sir.

Q. Did you notice whether there was any other way of getting down? A. I did not.

Q. You did not. Who came over—did anyone board after you?

Mr. OLSON.—He has already answered the Immigration Officer, Mr. Brown.

A. Mr. Brown followed me over.

Mr. VITOUSEK.—He followed you over. After you jumped down to Doctor James, what did you do?

A. I took hold of his left arm and with Mr. Brown assisted to get him up on his feet, and it was during that interim Doctor James was quite dazed at that time, and was very white, and [274] in fact, I

(Testimony of Lewis B. Reeves.)

noticed the back of his neck getting green and I says to Brown, I says, "We better get him up where we can lay him down," so Mr. Brown and I assisted him up on the Jacob's ladder—not the Jacob's ladder but the companionway, the companion ladder leading to the upper deck, to the deck above the deck we were on, a matter of seven or eight feet, and took him into a room behind the pilot-house which is known as the chart-room where there was a settee.

Q. And then what happened?

A. Doctor James fainted, and after considerable trouble we brought him to. He was out maybe four or five minutes, because the steward was sent away to get a glass of brandy and he was quite a long while getting it, and Doctor James had recovered when he arrived back with the brandy.

Q. Did Doctor James leave the boat after that?

A. Yes, sir.

Q. Was he assisted?

A. Mr. Brown and I both assisted him off the boat to get down on the launch.

Q. Down this companion ladder; how did you get up on the lumber?

A. Well, I don't recollect, but I remember assisting him to get up on the lumber. The exact place we went up on the lumber I don't recall. I do recall the fact that I kept hold of Doctor James all the way up on top of the lumber and went down on the launch to assist him to get down on the launch, to get down the ladder on the launch.

Q. Were any of the ship's officers with you?

(Testimony of Lewis B. Reeves.)

A. Why, the captain was with us most of the time.

Q. Was the captain with you when you assisted Doctor James off the boat? [275]

A. I believe he came down the deck with us; yes, sir.

Q. Have you ever boarded boats before with Doctor James? A. Many times; yes, sir.

Q. How was he able to board, was he able to board as well as anyone else?

A. Better than most of the doctors, I might say. Some of the doctors in the quarantine service were not quite as sure-footed as Doctor James was, by any means.

Q. Was he always agile in boarding boats?

A. Very.

Q. Ever show any hesitancy? A. No, sir.

Q. Had you noticed his ability, his physical ability as it would be apparent to you before that time?

A. He was always agile, as I say, which would naturally point to his physical ability being all right.

Q. Have you noticed it since that time?

A. Since that time I have not had occasion to notice Doctor James boarding. In fact, he has not done any boarding with me since that time that I recollect of.

Q. Has he been able to get around?

A. I see him in his office quite often, and see him on the street.

Q. Has he been able to get around as he was before?

(Testimony of Lewis B. Reeves.)

A. No, sir; he walks much slower, and walks with a limp.

Q. Have you noticed any difference in his age, does he appear older?

A. I would say he is ten years older than a year ago; that is, in appearance.

Q. On that day or date, you boarded the "Coolgardie," when the accident occurred, August 12th, did Doctor James have on dark glasses? [276]

A. He did not.

Q. When you went over the railing, was anything said to you by any of the ship's officers where you should get down from the pile of lumber?

A. Nothing was said to me at all by the ship's officers during the time until we arrived in the pilot house with Doctor James.

Mr. VITOUSEK.—That is all.

The COURT.—I want to ask a question before you proceed.

Q. Before you went up the Jacob's ladder on the side of the ship, the bow of the ship was to your left?

A. Yes, sir.

Q. And the stern to your right? A. Yes, sir.

Q. And when you got to the edge of the rail to step over, was this stack of lumber above the railing, you say?

A. It was not; it was about, I would say, eighteen inches or two feet below the rail, below the bulwark rail. The rails of that ship are all solid metal with water ports cut in, and the top of the rail, I suppose, was about five or six inches wide.

(Testimony of Lewis B. Reeves.)

Mr. OLSON.—A wooden rail, I take it, on top?

A. No, it is angle iron. It is a continuation of this bulwark bent over.

The COURT.—So that after you came over the side of the bulwark railing on to the lumber, the lumber was just immediately on the inside?

A. Immediately on the inside.

Q. Stacked up against the rail or bulwark?

A. Yes, sir.

Q. And how wide, did you say? [277]

A. I said three or four feet.

Q. Across?

A. Across to where the edge came to the deck.

Q. This Jacob's ladder extended over the lumber, as I understand, or did it extend on the inside?

A. No, it was hanging from the bulwarks.

Q. It did not extend over and across the lumber?

A. No.

Q. It was just hanging over the bulwarks fastened to something?

A. Yes, sir; it might have been a line leading from the end of that Jacob's ladder, I don't remember, but the head of the Jacob's ladder was at the rail.

Q. Fastened to the rail? A. Very probably.

The COURT.—I have got my vision of it now. All right, Mr. Olson, proceed.

Cross-examination of LEWIS B. REEVES.

Mr. OLSON.—Now, Captain Reeves, at the time you boarded the "Coolgardie," it was already full daylight, wasn't it? A. Quite; Yes, sir.

Q. And a clear morning? A. Very clear.

(Testimony of Lewis B. Reeves.)

Q. Not raining, or anything of that sort?

A. Yes.

Q. Quiet? A. Very quiet.

Q. As you stepped over the bulwark, you descended in stepping down, you climbed over, I take it, one foot after the other, if the pile of lumber was lying next to the railing then you [278] proceeded to the edge of the lumber and down to the deck as you went on board? A. Yes, sir.

Q. And when you came with your head up above the railing Doctor James had already fallen to the deck? A. Yes, sir.

Q. He was lying on the deck, at any rate?

A. On his hands and knees, or forearms and knees.

Q. Yes, but you did not see him fall?

A. I did not.

Q. This pile of lumber was a pile of loose boards or lashed? A. Lashed.

Q. Level top? A. The top was levelled up.

Q. And even-sided as it was piled toward the deck?

A. Yes.

Q. Going practically straight up and down?

A. Yes.

Q. And this pile of lashed lumber extended lengthwise alongside of the rail as it was piled?

A. Yes, sir.

Q. The boards would not move an inch as you walked over it? A. No, sir.

Q. Being lashed, that is correct, is it not?

A. Correct.

Q. About how high would you think that lumber

(Testimony of Lewis B. Reeves.)

pile was from the top of it to the deck?

A. I would say three and a half feet.

Q. Now, the exact specifications of these bulwarks, Captain, have been testified to here by Captain Thomson, of the "Coolgardie,"—at any *rant*, in order not to lose time or [279] waste time looking it up you are pretty sure it was a foot and a half from the top of the rail to the top of the lumber pile?

A. Yes, sir.

Q. And the distance from the top of the lumber pile to the deck would be the distance between the first distance and the height of the rail?

A. Yes, sir; that was approximate because the deck from midships out towards the rail slopes downward, what they call the bend of the ship, and causes the water-ways which are alongside the bulwark to be lower than the deck in the middle.

Q. On account of the slope of the deck towards the bulwarks?

A. Yes, sir; but an appreciable difference, but maybe six or seven inches.

Q. Now, as I understand it, Captain, you are not entirely clear in your own mind now when it was that you noticed that the mat was hanging in the way you have described, over the edge of the pile of lumber?

A. I am clear in my own mind that it was at the time Doctor James says, "I tripped over that mat," or words to that effect.

Q. But when was it with reference to your boarding the vessel that he said that?

(Testimony of Lewis B. Reeves.)

A. Immediately after I got hold of him. I then had hold of his left arm and was assisting him to his feet.

Q. He was then in a dazed condition, was he?

A. Very much dazed.

Q. And then it was that you looked around and saw the mat? A. I glanced and saw the mat.

Q. And it was lying with its length towards the bulwarks and extending out toward the deck? [280]

A. As I recollect, that's the way it was lying, something in that position.

Q. Practically straight, about one-third of the mat hanging over the edge?

A. About a third of the mat hanging over the edge.

Q. Was it lying over the edge, was the mat flat against the lumber pile or extending in an angle outward?

A. I would say it was wet and hanging almost straight down.

Q. But as far as the appearance of the mat, it was a mat, practically speaking, just like this one here in evidence in this case? A. Exactly.

Q. And as you remember it, Doctor James said when he was in that half dazed condition, "I tripped over that mat"?

A. Words to that effect; yes, sir.

Q. Was that the first time, that you, as far as you remember, took any note of the position of that mat?

A. It was; yes, sir.

Q. Previous to that time you did not pay any attention to it so you could not testify to it?

(Testimony of Lewis B. Reeves.)

A. No, I could not.

Q. Had Mr. Brown,—was he assisting you at that time in helping Doctor James when he made that remark? A. Yes, sir.

Q. So that he had come aboard also?

A. He was on the ship at that time, but whether he heard that remark I don't know. I never discussed it with him so I don't know.

Q. The deck had the appearance, did it not, of having the appearance of being recently washed down? [281] A. Yes, sir.

Q. And the mat, when you felt it, when you boarded the vessel or when you went off the vessel, had a feeling of being wet? A. Yes, sir.

Q. But you do not remember as to whether the top of the lumber pile was wet?

A. I do not. The occasion did not seem to warrant the notice of the top of the lumber pile at that time. In fact, everything was done in a hurry. I might explain that on that particular occasion I wrote up the doctor's book for him, his boarding book and did my own work besides, and we try to do our work with such facility as we can to allow the ship to proceed as rapidly as possible, and my entire actions that morning were entirely hurried, that is, during the time we boarded that ship, and consequently I did not observe probably as much as I might have under other conditions.

Q. But you did not stop to talk to the officers of the vessel when you came aboard, you immediately went to the assistance of Doctor James and busied

(Testimony of Lewis B. Reeves.)

yourself with that? A. Exactly.

Mr. OLSON.—I think that is all.

Mr. VITOUSEK.—That is all. [282]

Testimony of Harry B. Brown, for Libellant.

Direct examination of HARRY B. BROWN, for libellant, sworn.

Mr. VITOUSEK.—What is your name?

A. Harry B. Brown.

Q. And your occupation?

A. Immigration Inspector.

Q. At the port of Honolulu? A. Yes, sir.

Q. How long have you been in that occupation?

A. Since 1906.

Q. Do you know Doctor James, the libellant in this case? A. Yes, sir.

Q. How long have you known him?

A. I have known him since about the latter part of 1903, I think it was.

Q. Were you in the occupation that you are in now, on August 12th, 1917? A. Yes, sir.

Q. Do you recall boarding the "Coolgardie" on that date? A. I do.

Mr. VITOUSEK.—I think it might be admitted that that was the date, to save time.

Mr. OLSON.—Yes.

Mr. VITOUSEK.—How did you get out to the "Coolgardie"?

A. On the launch "Water Witch."

Q. Who were with you on that launch?

A. Doctor James, Mr. Reeves, and myself. I don't

(Testimony of Harry B. Brown.)

remember of any others.

Q. And the launch's crew, of course?

A. Yes, the engineer. [283]

Q. What preparations were there for boarding, that is, was there a ladder let down?

A. A Jacob's ladder.

Q. Which side of the boat was that on?

A. The port side.

Q. How did you board, who went first and who second, and who third?

A. Doctor James went first, and I am not sure whether Mr. Reeves or myself followed him. I am not sure which one of us, but we followed one right after the other.

Q. How high was the "Coolgardie" out of water at the point of the Jacob's ladder from the top of the rail to the water?

A. Well, it wasn't very high; I should say, well, I should judge about four feet, the top of the rail from the—something like that above my head; I am about six feet tall.

Q. Above your head?

A. Yes, further up to the top of the rail.

Q. How long would it take you to get to the top of the rail, climbing the ladder, would it take long?

A. Oh, just about a half a minute or something; it's only a few steps to go up, and it doesn't take very long to go up a few steps on a Jacob's ladder.

Q. A matter of seconds?

A. Well, a half or three quarters of a minute, a half a minute, something like that probably, one

(Testimony of Harry B. Brown.)

right after the other going up.

Q. You are not sure which went aboard second?

A. I think I boarded second because,—well, I am not positive of that, but when I got on top of the rail Doctor James was still on the deck, just being raised.
[284]

Q. You say that Doctor James was still on the deck. Was there an accident, or what happened to Doctor James?

A. He fell from the lumber down to the deck.

Q. Did you hear a noise before that, or how did you know he fell?

A. Well, the first I really knew of it was when I saw him on the deck, because I was going up there right behind him on the ladder, but down below, so I didn't see what happened.

Q. You did not see him fall?

A. I didn't see him fall.

Q. When you got to the top of the railing what was underneath of the rail, immediately underneath the rail? A. There was a lumber pile on there.

Q. A lumber pile; about how far below the railing was the top of the lumber pile?

A. Well, I couldn't say exacty, but inwards from fifteen to twenty inches, something like that.

Q. About how wide was the lumber pile?

A. About three feet, I should judge.

Q. Did you notice the length of the lumber pile?

A. Not particularly; it was piled along the rail there and was fastened to the rail with chains.

Q. Was there anything on top of the lumber?

(Testimony of Harry B. Brown.)

A. You mean right where the Jacob's ladder went over?

Q. Yes. A. A cocoa door mat there; yes.

Q. Calling your attention to Libellant's Exhibit 1, this mat, was it similar to that mat?

A. Very similar, yes, very similar.

Q. After you got up to the top of the rail, what did you do?

A. As soon as I saw the doctor was down there I immediately jumped off the pile of lumber to the deck to help him, but [285] a couple of ship's officers was raising him up.

Q. Did you help the doctor up?

A. Well, not from where he fell.

Q. After he got up, did you?

A. Well, there was three or four; I don't know whether I actually had my hand on him or not, but three or four of us there took him up a steep companion-way to the upper deck, and I know some of the ship's officers were there, but I paid no particular attention at the time as to who was present.

Q. Before, did you step on to the pile of lumber after coming over the ladder?

A. Yes, coming over the rail you had to.

Q. How did you get over the rail, put your leg over the rail?

A. Yes, and just got off the rail on the lumber and then jumped to the deck.

Q. Did you notice any other way of getting down?

A. No other way that I know of; none visible anyway; none right rear by.

(Testimony of Harry B. Brown.)

Q. Was there anything said to you about there being another way? A. No.

Q. After you jumped down to the deck did you notice the position of the mat?

A. I noticed it before I jumped down to the deck.

Q. You noticed it before you jumped to the deck?

A. Yes, sir.

Q. What was the position of the mat?

A. It was kind of cornerways across this lumber with one corner hanging down over the edge, something like it is there.

Q. Assuming this is the edge of the lumber, and that is the mat, place it in approximately the position you saw it. [286]

A. Similar to this. The Jacob's ladder and the rail would be here, and this looks like it would be this way, and then it had been kicked around that way some way.

Q. The mat was cornerwise then, you say, with one corner hanging over?

A. Yes, with the rail over here.

Q. Facing the—just a moment. You say the Jacob's ladder was on the port side?

A. Yes, sir.

Q. Was it forward of midships or aft of midships? A. Forward.

Q. Was it forward of the break in the ship?

A. Yes; oh, yes.

Q. Then as you—you would be facing the forward part of the ship, which end of the mat was hanging over, the end toward the break, or—

(Testimony of Harry B. Brown.)

A. Towards the stern; yes.

Q. Where was Doctor James taken from the—after he fell and was assisted up?

A. In the chart-room, I suppose it would be called, the chart-room.

Q. Was that on the same deck, or above?

A. No, the deck above.

Q. And then what happened?

A. Well, he started to—he went in there and complained of his knee, and after saying a few words, why, I believe he was writing in his book, just starting in, and then he fainted.

Q. About how long was he out?

A. Well, not very long; a couple of minutes, probably.

Q. And then came to, and what did you do then,—what did he do? [287]

A. Well, he finished—he looked at the crew of the boat, we assisted, we had them brought right up to the door of the chart-room.

Q. They had the crew brought up? A. Yes.

Q. And then Doctor James was taken off the boat?

A. Yes.

Q. Was he assisted off, or did he go by himself?

A. Well, Mr. Reeves and I helped him, and he went in the launch with us.

Q. You helped him down the companion-way?

A. Yes, and I think down the Jacob's ladder. I got on first right under him so when he came down in case he fainted again or anything I would be below to catch him.

(Testimony of Harry B. Brown.)

Q. That is the same Jacob's ladder you went on the boat by? A. As I remember it.

Q. Did you help him on to the lumber?

A. I cannot say positively, but I think Mr. Reeves and I both, one on each side of him.

Q. Was he helped on to the lumber, did you notice?

A. I think he was, I cannot say positively.

Q. But he would have to be in order to get to that Jacob's ladder?

A. Yes, he would have to go over that lumber again.

Q. Were any of the ship's officers with you?

A. I think they came down with us to see him over the side of the ship.

Q. Was the captain there?

A. I couldn't say positively, but I think he was, because he was with us in the chart-room. I don't know whether he came down the companion-way on to the lower deck or not; I can't [288] say positively as to that.

Q. Had you ever boarded with Doctor James before that time? A. Many times.

Q. Did he ever have any trouble in going aboard boats?

A. None that I ever noticed. He seemed to be able to get around and up there as quick as any of us.

Q. Did he ever board by way of a Jacob's ladder before? A. Oh, yes.

(Testimony of Harry B. Brown.)

Q. Did he ever have any trouble boarding that way? A. No.

Q. From your observation how was his physical condition before that time, was he agile, able to get about? A. Yes; oh, yes.

Q. As well as anyone?

A. Yes. I remember the doctor quite well, on Quarantine Island, that long causeway they have there; he is quite a walker.

Q. Did he show his age?

A. Well, I don't know, not particularly. He was able to get about.

Q. Have you noticed his since the accident?

A. Why, yes.

Q. What has been his condition since the accident, has he been agile, able to get around?

A. Well, he was limping for a long time after that. I know for a long time after the accident he was not able to board at all, and I asked some of the others, the other doctors, why Doctor James was not boarding, and they said his knee was still bothering him.

Mr. VITOUSEK.—That is all. [289]

Cross-examination of HARRY B. BROWN.

Mr. OLSON.—Mr. Brown, you remember, do you not, that I called upon you several months ago down at the Immigration Station and interviewed you regarding this accident?

A. Yes.

Q. Didn't you tell me at that time, Mr. Brown, that you did not remember just what position the

(Testimony of Harry B. Brown.)

mat was in on that lumber pile?

A. I don't know whether I told you that or not, Mr. Olson.

Q. Didn't I ask you particularly whether it was hanging over the edge of the pile and you said you didn't remember that it was hanging over the pile in any way?

A. I don't remember exactly what I told you, whether I told you it was just cornerwise or whether it was hanging over the pile of lumber or not.

Q. Now, your recollection at this time, however, is that it was at an angle as far as the direction of the lumber pile was concerned? A. Yes, sir.

Q. Are you sure it was actually hanging over the lumber pile? A. Well, as I remember it.

Q. Now?

A. Yes, I know it was at quite an acute angle, because I came near falling a number of times myself, and I always look now before I take any chances on those things.

Q. Mr. Reeves, now Captain Reeves, has already testified in this proceeding here to-day, that he preceded you up the Jacob's [290] ladder, and up following Doctor James, and although you don't remember distinctly, that may be a fact?

A. That may be a fact.

Q. And of course, if he did, of course, he went over the lumber pile and down to the deck before you got down to the deck? A. Yes.

Q. The mat that was on the lumber pile, you say, was just the same kind of a mat as this Exhibit 1?

(Testimony of Harry B. Brown.)

A. Very similar, yes, made of the same material. I can't say that is the one, but—

Q. But it looked like it?

A. It looked something like it.

Q. When did you first hear Doctor James speak after you observed him on the deck?

A. I can't say whether it was down on the deck, or after we got up on the upper deck.

Q. As you remember it, what was it that he first said? A. No, I don't remember.

Q. Did he make any remark at all as to how he happened to fall?

A. I heard him,—whether down there or up in the captain's quarters, I heard him say that he fell.

Q. He simply said that he fell? A. Yes.

Q. He didn't say how he happened to fall or what caused him to fall?

A. I don't remember that now.

Q. When you say you saw no other mode or means of getting to the deck, or from the deck to the Jacob's ladder again over this lumber pile, you don't mean to say that you could not have gone to any other position except the one directly there in order to get on to the lumber pile, do you? [291]

A. Well, if we went the usual way, these steamers, you know, they usually have a short flight of steps that reaches from the rail to the deck, and that is usually put by the rail close to the Jacob's ladder. When we come over the Jacob's ladder we can step on these steps to the deck.

Q. But as far as the place directly in front of the

(Testimony of Harry B. Brown.)

Jacob's ladder, that was not the only point where you could get on to the lumber pile, or down?

A. Yes; I said you would have to get down from the lumber pile at any other place as well—you would have to jump down the same as you would in front of the Jacob's ladder.

Q. In other words, you could get on the lumber pile at any place along its length?

A. Yes.

Q. Or down the lumber pile in the same way?

A. Or down the same way.

Q. Or the ends of the lumber pile?

A. Well, I wouldn't say for sure about the ends?

Q. You didn't notice that?

A. I didn't go near the forward end of it at all.

Q. And at the after-end, did you notice that, did you pay any attention to it, how it was piled?

A. Not particularly, except as I remember it, the lumber wasn't straight, the ends—there was different lengths of lumber and it might have been slanting down a little bit, but I am not absolutely sure.

Q. This lumber pile, by the way, that was lashed, wasn't it secured?

A. Lashed to the rail; yes.

Q. Yes, so that it was not a loose pile of lumber?

[292] A. No.

Q. The surface was firm? A. Yes.

Q. And flat? A. Practically flat, yes.

Q. And straight up and down, practically speaking, from the top to the deck on the inward side?

A. Yes.

Mr. OLSON.—That is all.

(Testimony of Harry B. Brown.)

Redirect Examination of HARRY B. BROWN.

Mr. VITOUSEK.—Mr. Brown, did you notice whether Doctor James had on a pair of dark glasses that morning?

Mr. OLSON.—I object to the question, if the Court please, not being proper direct,—all right; withdraw the objection, I don't mind.

A. I have,—I am not sure on that now, whether he had on dark glasses or not.

Q. Did you notice anything at the after end of the lumber?

A. Well, not—I can't say that I did when I first got on the boat, because I saw the doctor down there and my first thought was to help him, but afterwards they have some bitts there, I think it is called, where they fasten the lines and ropes to when the boats are tied to the wharves.

Q. What are these bitts?

A. Why, it's metal, probably two feet high or something like that, where they wind the rope.

Q. Are there two posts? A. Two, yes.

Q. And you say metal, what kind of metal?

[293] A. I suppose cast iron.

Q. You noticed these bitts on the "Coolgardie," did you?

A. As I remember it, I saw bitts there.

Q. How was the top of the bitts?

A. Well, the lumber was higher than they were.

Q. The top of the bitts itself, were they round or square?

Mr. OLSON.—Does counsel intend that witness

(Testimony of Harry B. Brown.)

shall answer as he is gesticulating?

A. The tops were oval shaped, not flat.

Mr. VITOUSEK.—Have you had much experience in boarding vessels?

A. Quite a good deal.

Q. Can you say whether it would be any safer to go down, stepping on these bitts, or to jump off the pile of lumber?

A. Personally, I would jump off for the simple reason that the pile of lumber was not so very wide, probably three or four feet, something like that, I don't think over four feet wide, but it was quite a few feet from where the Jacob's ladder was to where these bitts were, and the boat is a small boat and is rolling, and personally I would rather take chances jumping off there than to walk with the boat rolling like that, down to these bitts.

Q. Would the bitt itself give you a sure foot hold if you stepped on it? A. No, sir.

Q. Why not?

A. Well, it is not quite as oval as this knob here, but almost as oval as those knobs there.

Q. That is, on the Court's desk? A. Yes.

Q. That would be the reason that it wouldn't give you a sure foothold? [294]

A. You step on there, and on these boats before they get into port, sometimes they are painted or there is tar on these things and they might be slippery, and your foot would slip one way or the other on it.

Q. Would it be slippery because of the metal?

(Testimony of Harry B. Brown.)

A. Yes, if it had some fresh tar or fresh paint on there it would be worse.

Mr. VITOUSEK.—That is all.

Recross-examination of HARRY B. BROWN.

Mr. OLSON.—Mr. Brown, did you pay any special attention to the after end of that lumber pile at any time you were on board the "Coolgardie"?

A. I looked at it going down, not specially, but I noticed it was not exactly straight.

Q. Now, then, Captain Thomson has testified that by actually trying out just before he testified here, by putting a ruler down on the top of these bitts on the "Coolgardie" that it was only at the very edges that there was any space between the top of the bitts and the ruler, that it was perfectly flat. Now, are you prepared to say that Captain Thomson was erroneous when he made that statement?

Mr. CATHCART.—We object to the question on the grounds it's incompetent, irrelevant and immaterial, and not the proper method of asking a question in that regard.

Mr. OLSON.—Withdraw the question; I will put it another way.

Q. Are you prepared to say, Mr. Brown, from your personal [295] recollection of these bitts that you are not confusing them with, possibly, the bitts of some other vessel?

The COURT.—That's legitimate; overrule the objection to the last question; of course he withdrew that one.

(Testimony of Harry B. Brown.)

Mr. CATHCART.—I didn't object to the last question.

The COURT.—I will admit the last question.

Mr. OLSON.—Read the question.

(Last question read.)

A. Well, I can't say that—well, let's see; most of the bitts I have noticed on these vessels are very similar, and the bitts might not be as round as the bitts there; there might be a short space in the center, but the flat spaces I don't believe was large enough to make a safe footing stepping from the lumber on it.

Mr. OLSON.—But answer my question.

The COURT.—The question was, are you sure you haven't those bitts confused with the bitts of some other vessel?

A. Well, I didn't pay any particular attention to those bitts, and the last time the boat was in here I didn't look at them.

Mr. OLSON.—That's the point. In other words, you are not testifying now from any specific recollection that you had of those exact bitts?

A. I can't say that I have any specific recollection.

Q. I will ask your attention to Claimant's Exhibit 3, given in the testimony of Captain Thomson, and call your attention to the drawing there shown on this plan—

Mr. CATHCART.—Let me see, please.

Mr. OLSON.— —and call your attention to that part of the drawing at or near the left-hand end of

(Testimony of Harry B. Brown.)

the drawing, there being two pillars apparently drawn there with the figures 12" and 9" [296] in the one and 12" and 9" in the other, and the figures 13" and 16" between these two. A. Yes.

Q. Those would be apparently bitts, would they not, if that represented the deck of the vessel or the bulwarks of the vessel? A. Yes.

Q. Now, then, from your own exact, your own actual recollection of the "Coolgardie's" bitts, would you be prepared to say that is not a correct drawing of those bitts?

A. At the present time I could not say they are not correct.

Q. Yes, about what time of morning was it when you went to the "Coolgardie" on August 12th?

A. About seven A. M.

Q. Light or dark? A. Light.

Q. Rainy or clear? A. Clear as broad day.

Q. Quiet or rough?

A. Well, usually—not unusually rough, and not so unusually calm.

Q. Now, bearing in mind I am asking you about your actual recollection that morning, wasn't it a fact that it was a very quiet morning? If you don't remember from your actual recollection, that's all there is to it.

A. I don't remember exactly.

Q. When you answered counsel in regard to whether or not Doctor James wore dark glasses that morning, you started out to say "I," or something to that effect, as if you were going to answer one

(Testimony of Harry B. Brown.)

way or the other, and then you said you didn't remember. Were you not about to say that it was your impression that he did have on dark glasses on that morning?

A. No, I have seen him two or three times wear dark glasses. [297]

Q. Boarding vessels?

A. Not as I remember of; I seen him along the waterfront there.

Q. When, if you can remember, not any exact date, but—

A. Along about that time, during last year.

Q. Last year?

A. And since, too, I remember.

Q. And before?

A. I think so, I am not positive on that matter.

Mr. OLSON.—That is all.

Mr. VITOUSEK.—That is all.

The COURT.—Let me ask the witness a question to get in my own mind some things that have been referred to as bitts here.

Q. Where were the bitts, where were these things you called bitts with reference to the lumber?

A. Between the end of the lumber and the break in the ship.

Q. To your right as you climbed the vessel?

A. Yes, sir.

Q. In other words, towards the rear or the stern of the vessel from where the accident occurred?

A. Yes.

Q. And these bitts were upright posts, were they?

(Testimony of Harry B. Brown.)

A. Upright like posts like they tie the hawsers on, around.

Q. And near the rail or inside of the vessel?

A. Yes, near; a foot or two away from it, where the hawser goes through an opening.

Q. And in the rear of the pile of lumber?

A. Yes.

Q. And how far did the top of them rise above the deck? A. All of them are above the deck.

Q. Did you notice how far they rose upon the deck? [298] A. I didn't notice.

Q. How far were they to the rail where you got on the vessel, where the Jacob's ladder reached, how far?

A. Well, I can't say exactly, somewheres around ten or twelve feet.

Q. That is your best judgment? A. Yes, sir.

Q. How did you get on to the deck that morning?

A. I went over, and jumped from the lumber to the deck.

Q. You jumped to the deck? A. Yes.

Q. Do you remember how far it was?

A. From the top of the lumber to the deck?

Q. Yes.

A. I should judge something like three feet, maybe a little less.

Q. Was it that far?

A. Well, anywheres between two and a half and three feet.

Q. Well, how far was it to the forward end of the lumber?

(Testimony of Harry B. Brown.)

A. I didn't pay much attention to that, but it was further than it was to the rear, a little further, anyway.

The COURT.—That is all.

Mr. VITOUSEK.—If your Honor please, another witness that we have is a physician, and he has just informed me that he has a call and we would like to put him on to-morrow and continue the action.

Mr. OLSON.—At this time, and in order not to delay the matter, and at the same time not to inconvenience witnesses who are engaged in rather important work, I will ask if you have more than one medical witness?

Mr. VITOUSEK.—No.

Mr. OLSON.—Just one medical witness, and then you close your case? [299]

Mr. VITOUSEK.—Yes.

Mr. CATHCART.—Will you have any rebuttal?

Mr. OLSON.—Of course, mine isn't rebuttal; mine is defense.

Mr. CATHCART.—We will close the testimony to-morrow morning, and then have a time fixed for argument; is that right?

Mr. OLSON.—Yes.

The COURT.—Yes; you can argue to-morrow, if you wish, or if you wish you can postpone it. Continue this case until to-morrow morning at nine o'clock. [300]

[Title of Court and Cause.]

Testimony of Dr. Archibald N. Sinclair, for Libellant.

Honolulu, H. T., August 28, 1918, 9:00 A. M.

Direct examination of Dr. ARCHIBALD N. SINCLAIR, for libellant, sworn.

Mr. VITOUSEK.—What is your name?

A. Archibald N. Sinclair.

Q. And your occupation?

A. I am a physician and surgeon, and an officer in the public health service.

Q. What connection have you with the public health service? A. Boarding officer.

Q. Do you know Doctor James, the libellant in this case? [301] A. Yes, sir.

Q. How long have you known Doctor James?

A. About eighteen years.

Q. How long have you been connected with the Public Health Service in Honolulu?

A. About eighteen years.

Q. Has Doctor James been connected with the service?

A. Yes; he came in the service about the same time that I did.

Q. What is the nature of your connection with the service?

A. At the present time I board incoming steamers, incoming vessels for passing quarantine.

Q. What are you, for instance, in the service?

A. Acting assistant surgeon.

(Testimony of Dr. Archibald N. Sinclair.)

Q. And what is Doctor James?

A. Acting Assistant Surgeon.

Q. Are your status the same?

A. Doctor James is full time acting assistant surgeon, I am only part time.

Q. Is it a civil service position? A. Yes.

Q. How long have you been a practicing physician and surgeon? A. Since 1894.

Q. And a graduate of what—

Mr. OLSON.—I admit Doctor Sinclair's qualifications as a physician and surgeon.

Mr. VITOUSEK.—All right; it is admitted that Doctor Sinclair is a duly qualified physician and surgeon.

The COURT.—All right.

Mr. VITOUSEK.—Did you treat Doctor James for any physical condition since August, 1917?

A. At the beginning of September he called me in in regard to his knee. He said that he had injured it on board a vessel, [302] and it was very badly swollen, and he was unable to walk upon it with any celerity. He could hobble around, and I thought it advisable on account of the poor progress it was making to have an X-ray taken. He came up to my office and I made some X-ray plates, and at that time there was evidence of a small piece of cartilage loose in the joint as well as considerable fluid, and I advised that he keep it at perfect rest for some time, which he did, and there was very little improvement in his—at least there was considerable lack of regaining his power of full use of

(Testimony of Dr. Archibald N. Sinclair.)

the leg. Any pressure of the leg, particularly when it was bent would cause the leg to give way, and I photographed it again in February. In February we could not find any loose particle, the X-ray did not show any great pathology beyond some fluid in the joint. Of course, the fluid is not visible, but we can tell by the distance which the bone is separated, and it was evidently one of these knee conditions where there is chronic inflammation of the synovial membrane of the leg. Possibly there is still a small piece of cartilage in the joint, because there are several ridges in the joint, and if such a piece of cartilage were to get behind one of those ridges naturally it would not be discovered because they are the same density to the X-ray as the protuberances in the joint. I fancy myself there is still a small piece of cartilage in there with an inflammation of the synovial membrane keeping up a constant irritation of the body.

Q. What would you call in medical terms the condition of the knee?

A. Chronic arthritis with possibly a floating foreign body.

Q. How many X-ray plates did you take in September? A. Two [303]

Q. I will show you an X-ray plate and ask you if this is a plate which you took, also the envelope in which the plate came. A. Yes.

Q. I will show you a photograph and ask you if this is a print from the plate?

(Testimony of Dr. Archibald N. Sinclair.)

A. The plate and the print both show the conditions which I found.

Mr. VITOUSEK.—We offer this plate in evidence.

(Plate received in evidence and marked Libellant's Exhibit "B.")

Mr. OLSON.—For the purpose of simplifying the record it will be unnecessary to put in the plate if the doctor will say the photograph shows the same thing as the plate.

Mr. VITOUSEK.—I would rather not put in the plate because the plate is part of the Public Health Records.

Mr. OLSON.—The photograph will be agreeable to me.

(Plate withdrawn, and photograph marked Libellant's Exhibit "B.")

Mr. VITOUSEK.—Will you explain from the plate, or photograph, the condition of which you speak, Doctor?

A. In the photograph it shows at the ridge of the tibia, which is this bone, a small dark spot there, which is a light spot in the plate, showing a small foreign body. It is a triangular piece lying right on the ridge there. You can see it slightly here, that little black spot.

The COURT.—There is a drawing there.

A. An arrow; I did that on the plate, that is to point to the spot where the foreign body is.

Mr. VITOUSEK.—And that, as you say, Doctor, indicates a loose piece of cartilage?

(Testimony of Dr. Archibald N. Sinclair.)

A. Yes.

Q. Can that condition be healed? [304]

A. Well, it might be absorbed, but these chronic conditions of the synovial membrane of the knee joint are rather discouraging things to treat. I haven't treated very many, but I have taken very many X-rays of them. They send them in by the other physicians. It is rather what is known as football knee; if a man goes to college and plays football that he gets such a condition that troubles him the rest of his life, all his life.

Q. How long did you treat Doctor James for that condition?

A. Well, he was more or less under my care all the time.

Q. You mean from September—

A. He was a physician himself, and I did not see him daily or anything like that. I had general supervision of the case.

Q. You stated the X-ray plate taken in February did not show—

A. It showed no loose body.

Q. No spot. Could it be possible for the cartilage to be loose and not be shown?

Mr. OLSON.—I object to a repetition of testimony already in the record, he already said that.

The COURT.—Yes, I am pretty sure he said that already this morning.

A. Yes.

Mr. VITOUSEK.—In your treatment of the knee, Doctor, and in your first and last examinations, would you say that the condition is now chronic?

(Testimony of Dr. Archibald N. Sinclair.)

A. Yes.

Q. What is the condition, what is the physical condition of the knee with it being chronic, and explain the use and the care that would be required, if any.

A. Well, at the present time there is a chronic inflammation of [305] the synovial membrane which will preclude the use of the knee for any severe strain. There will always be considerable pain in the knee, and one of the symptoms, one of the complications of this small loose particle is the giving way of the knee under pressure, as soon as the weight is placed on the knee the knee seems to give right away. Understand, when there are two very delicate surfaces, because they are smooth polished surfaces, delicate surfaces placed in contact, if there is a small piece of grit even, or something of that kind in between them, when they come together there is a reflex action of the muscles which apart altogether from any action of the brain throws the surfaces apart; in other words, it bends in and causes the leg to give way.

Q. Do you mean by chronic condition that he will never get over it?

A. I would not say that. I would say the chances are it will bother him all his life, but I would not take any hand to say he would never get over it.

Q. From your knowledge of the condition of Doctor James' knee and his age and all, do you consider that he will—

A. I think he has very little chance, very small

(Testimony of Dr. Archibald N. Sinclair.)

chance of getting better, but I wouldn't say that there was none, though.

Q. But it is not likely? A. Not likely.

Q. You knew Doctor James before August 12th, 1917?

A. I have known him as I said, for eighteen years.

Q. Have you known him well?

A. Yes, very well; I have seen him almost daily.

Q. What was his general physical condition before that time?

Mr. OLSON.—How long before? [306]

Mr. VITOUSEK.—Immediately before 1917.

A. Very good.

Q. Was he able to get around?

A. A very active man.

Q. And what has been his condition since that date?

A. He has not been active at all; he has been unable to move around at all very much.

Q. Have you noticed that Doctor James is older now than he was then?

A. Doctor James seems to have aged very considerably in the last few months, not only in his activity, but in other ways.

Q. Is the position of public—as acting assistant surgeon of the public health service a permanent position?

A. Yes, as far as he behaves himself, it is a civil service position.

Q. Are they subject to dismissal?

A. For misconduct; yes.

(Testimony of Dr. Archibald N. Sinclair.)

Q. Are they subject to dismissal if they cannot physically perform—

A. Oh, yes, an acting assistant surgeon is.

Q. Are there any provisions for retirement?

A. Not an acting assistant surgeon.

Q. In Doctor James' present condition is he able to perform his duties as a boarding officer?

A. No.

Mr. VITOUSEK.—That is all.

Cross-examination of Dr. RICHARD N. SINCLAIR.

Mr. OLSON.—Doctor Sinclair, when did you last examine Doctor [307] James' knee?

A. February 25th.

Q. Of 1918? A. Yes.

Q. You have not examined it since that time?

A. Not to my recollection; no.

Q. Now, was that at the time you took the second X-ray plates? A. Yes.

Q. So far as that second X-ray plate was concerned, that did not disclose, as I understand it, the presence in the knee or in the knee-joint or any floating or loose pieces of cartilage or any other substance? A. It did not.

Q. And you stated, as I understand it, that there was no pathological condition except—

A. Yes, undoubtedly fluid in the knee, in the joint.

Q. Excess fluid? A. Yes.

Q. But that not a considerable one?

A. At that time, I possibly omitted it, but I have

(Testimony of Dr. Archibald N. Sinclair.)

examined the knee physically and there was considerable fluid.

Q. But that was the only pathological condition you found?

A. The patella, the kneecap, was quite a way from the joint.

Q. On account of the fluid the kneecap was raised beyond its normal condition? A. Yes.

Q. So that as far as your examination at that time was concerned not only of the knee but your observation of the X-ray plate, your diagnosis was—

A. Chronic arthritis, being an inflammation of the synovial membrane.

Q. Inflammation of the synovial membrane?
[308]

A. Yes.

Q. But you would not be able to say as a physician that there was then existing still any loose cartilage or any other foreign substance in the joint?

A. I would not say so.

Q. In the first part of September, I believe you said, for the first time Doctor James came to you about his knee? A. Yes.

Q. And you immediately took these X-ray plates?

A. A few days after. It did not heal up in time and we wanted to see what was the matter.

Q. Now, what advice did you give to Doctor James as to the care of his knee?

A. I told him to rest it for three or four weeks.

Q. Three or four weeks?

A. And that then he could try to walk on it and

(Testimony of Dr. Archibald N. Sinclair.)

see if it improved at all, and if it was not improved to rest it some more.

Q. Did that mean, did that advice carry with it the instructions to lie abed?

A. Not absolutely necessary to lie abed so long as he kept the weight off the knee.

Q. Yes.

A. Move around the house very quietly or anything like that.

Q. And in the course of three or four weeks did Doctor James come to you again?

A. I went over to his house, I think it was.

Q. I see, and did you find him improved?

A. Very little.

Q. What advice did you give him then?

A. I told him probably he ought to have some support to the knee. [309] and try to use it a little and see if it could get any better under use.

Q. Well, did he follow your advice?

A. I think so.

Q. Do you know that he did?

A. No. He simply told me he went to board ship and as soon as he put weight on it it went away with him, so I told him he had better stop boarding.

Q. Now, what kind of support, if any, did you tell him to get?

A. Well, almost any kind of support, a figure 8 bandage would be sufficient, or a cap, or any appliance that he could get at a drug-store.

Q. Something to bind the knee?

A. Yes, to give it support.

(Testimony of Dr. Archibald N. Sinclair.)

Q. And after that consultation with you did you again see and examine Doctor James' knee before February?

A. I saw him but I did not examine his knee. I saw him in the office and asked how he was getting on.

Q. And what was his reply?

A. His reply was that he was not getting on very well, and then I told him he had better come up and let us see if we could find anything further on another X-ray.

Q. That was about February?

A. Yes; I think I only saw him maybe three or four times in between. Doctor James being a physician I just gave him general instructions.

Q. Now, I think you called this condition chronic arthritis? A. Either one, Greek or Latin.

Q. Is there any difference between that and the term synovitis?

A. Well, arthritis is a more expansive term. Arthritis includes chronic synovitis. The other is a more specific [310] term you might say, chronic synovitis would not include a floating particle in the joint, but chronic arthritis would.

Q. Yes; that is, chronic arthritis is broad enough to include that? A. Yes.

Q. It would be the proper word for chronic synovitis, also? A. Oh, yes.

Q. Being inclusive of that term?

A. Arthritis means the joint, and synovitis meaning synovial membrane.

(Testimony of Dr. Archibald N. Sinclair.)

Q. I think you have given the term chronic arthritis, because while the X-ray plate of February and your examination of the knee in February did not disclose the continued presence of any floating foreign substance or cartilage in the knee, yet on account of the possibility of it still being there you used the word "arthritis"? A. Yes.

Q. But as far as the actual diagnosis is concerned and your observation of the plates and what they disclosed, chronic arthritis would be the appropriate term for his condition?

A. Yes, still a very serious condition, however.

Q. Yes. Now, Doctor, this condition of the knee would not prevent Doctor James, however, from practicing his profession as a medical man in civil life, would it?

A. Well, it depends on what he has to do. A knee that you can't depend on is a pretty serious handicap to any man in any walk of life.

Q. Yes, but it would prevent his going on about his daily work caring for patients, would it?

A. Well, if you ever had an acquaintance with anybody who had [311] football knee, you know there is a liability of his being laid up any day for a day or two at a time if he happens to step off a pavement, he must step off very carefully, and that is a serious condition in practicing medicine.

Q. But under ordinary conditions with the exception of that possibility from time to time it would not prevent his carrying on his work or profession as a medical man?

(Testimony of Dr. Archibald N. Sinclair.)

A. Not in ordinary work; no.

Q. No?

A. He could do a nice consulting practice in his office.

Q. From your observation of Doctor James, he is a capable medical officer? A. Oh, yes.

Q. No question about that? A. Yes, sir.

Q. And under ordinary conditions he ought to do well in civil life as a practicing physician, I take it?

A. Well, he has been a long while in the public health service. I don't know. He would not be as valuable a man in civil practice as in the public health service.

Q. For the reason that he has had so much experience in the public health service? A. Yes.

Q. Now, when you say there will always be considerable pain in the knee, you mean constant pain in the knee?

A. Oh, no. I mean at any time there is liable to be an injury to the knee.

Q. A wrench or twist or something of that sort?

A. Yes, which may lay him up in bed two or three days or even a week, and possibly there will always be more or less fluid in the joint. [312]

Q. Yes; I understood you to say, in substance, in answer to counsel's question, that since this accident in August of 1917, when Doctor James injured his knee, that he has not been able to move about much at all?

A. I have not seen him enough to say that. I don't think I said that. I have not seen him on ships.

(Testimony of Dr. Archibald N. Sinclair.)

Q. Oh, you have not seen him boarding ships since that time, that is the extent of your testimony as to—

A. I have seen him in the office and he seemed to be moving around very slowly, but I have not seen Doctor James a great deal.

Q. You have seen him walking on the streets, haven't you, occasionally?

A. Yes, he seems to walk very slowly.

Q. But you intended to say, as I understand it, principally, that he has given up boarding ships since that time? A. Yes.

Mr. OLSON.—That is all.

Redirect Examination of Dr. ARCHIBALD N.
SINCLAIR.

Mr. CATHCART.—A professional man, either a doctor or a lawyer who gets on in years, in the late fifties, finds it difficult to build up a practice, doesn't he, Doctor?

A. Yes, I found it difficult before I was forty.

Mr. CATHCART.—That is all. [313]

Recross-examination of Dr. ARCHIBALD N.
SINCLAIR.

Mr. OLSON.—In other words, you mean any person starting out in civil practice finds it difficult at first to build up a practice?

A. The older you get the more difficult it is, I think.

Q. But there are men who are capable enough, less young in years, able to build up a practice, it doesn't depend on a man's age, does it?

A. Well, no; but when a man is over fifty years, it is pretty hard for him to build up a practice.

(Testimony of Dr. Archibald N. Sinclair.)

Q. But if he is known well in the community it will help him a great deal, will it not? A. Yes.

Mr. OLSON.—That is all.

The COURT.—One question that I want to ask about this knee proposition.

Q. How is the strength of the knee, how is the knee as to strength,—is the strength of the knee affected?

A. Why, yes, very seriously, on account of the separation of the articular surfaces by the fluid in the joint.

Q. This is a condition that has sometimes been referred to as water on the knee?

A. Yes, although water on the knee includes many other things; water on the knee might be tuberculosis.

Q. But he could have water on the knee from the injury just the same? A. Yes. [314]

Mr. VITOUSEK.—There is one question that I should have asked on direct examination, in regard to the condition of the knee, and I would ask permission of the Court to ask it now. The question I would like to put to the Doctor is, if there is any other condition that might be brought about through this injury, if the knee is subjected to any other conditions or influences or diseases?

A. Why, yes, the condition of the inflammation of the synovial membrane would render it liable to become infected with any acute disease, any acute microbic disease with which he became infected. If he got pneumonia or gonorrhoea or any infectious disease it might probably result in the organism lodging

(Testimony of Dr. Archibald N. Sinclair.)

in the knee, causing suppuration of the knee. It is very fortunate the knee-joint has remained closed and the blood stream closed and uninfected while we have this complaint, otherwise it goes on to what we call suppurative synovitis.

Q. Which might happen—

A. To anyone suffering from chronic synovitis which would end in the destruction of the knee-joint entirely.

Mr. VITOUSEK.—That is all.

We rest, if the Court please.

Mr. OLSON.—If the Court please, I am expecting the only witness I expect to put on the stand, very shortly. May we take a short recess?

The COURT.—All right; recess. [315]

Testimony of John R. Macaulay, for Libellee.

Direct Examination of JOHN R. MACAULEY, for libellee, sworn.

Mr. OLSON.—Your name is John R. Macauley?

A. Yes, sir.

Q. And you reside in Honolulu? A. I do.

Q. And have resided in Honolulu for many years?

A. For thirty-six years.

Q. At the present time what is your occupation?

A. Pilot for the port of Honolulu.

Q. Were you a pilot at the port of Honolulu in and during the month of August, 1917? A. I was.

Q. Do you know the British steamship "Coolgardie"? A. I do.

Q. And are you acquainted with Doctor William

(Testimony of John R. Macaulay.)

F. James? A. I am.

Q. In the public health service in this port?

A. Yes, sir.

Q. Were you acquainted with him in August of 1917? A. I was.

Q. And prior to that time?

A. And prior to that time.

Q. Do you remember the calling at this port of the "Coolgardie" in the month of August, 1917?

A. I do.

Q. Were you on that vessel at her call at that time? A. I was.

Q. In what capacity? A. As pilot. [316]

Q. Do you remember the day of the week?

A. I do not.

Q. Whether it was Sunday, Monday, or any other day.

A. I don't remember whether it was Sunday, Monday, or what day.

Q. You went out as pilot to bring her in, I take it?

A. I did.

Q. About what time of day was it that you boarded her?

A. I am not positive; I don't remember what time it was.

Q. Was it in the morning or afternoon?

A. I really don't remember; I could trace it up in the records.

Q. Well, that is not so important. Captain, as pilot, you have to bring in many many vessels in the course of a month, do you not? A. Yes.

(Testimony of John R. Macaulay.)

Q. So you don't bear in mind particularly one vessel more than another as to time and so forth?

A. I really could not tell you what vessels I boarded last week if you were to ask me the time or anything else about it.

Q. I see; however, referring to the call of the "Coolgardie" in the port of Honolulu in August of 1917, do you remember an accident that took place on board the "Coolgardie" to Doctor James?

A. I do.

Q. Yes; where were you at the time that he had this accident? A. On the bridge.

Q. Did you see the accident itself?

A. I did not.

Q. No; you were not facing toward Doctor James when he had his fall? A. No, I was not.

Q. Who else was with you on the bridge, if anybody? [317] A. The master of the ship.

Q. Captain Thomson? A. Captain Thomson.

Q. Now, in boarding the "Coolgardie," how did you get aboard?

A. In the usual manner,—Jacob's ladder.

Q. On what side of the vessel, if you remember?

A. Port side.

Q. And in going over the rail on the port side and getting to the deck, what did you find immediately alongside?

A. Inside the rail on the main deck there was a pile of dunnage boards or planks stowed close up to the bulwarks and lashed down there.

Q. Not loose boards, then?

(Testimony of John R. Macaulay.)

A. No, they were lashed, lashed down.

Q. About how high of a step from the top of the rail down to the lumber pile?

A. Well, about, I should judge about three or four feet.

Q. Three or four feet to the top of the lumber pile?

A. From the top of the pile to the main deck.

Q. Yes, but how high about was the rail?

The COURT.—Above the lumber pile.

A. About a foot or so to the best of my recollection.

Mr. OLSON.—Yes; a step from the rail to the lumber pile.

A. To the surface of the lumber.

Q. And then from there to the deck you have already stated? A. Yes.

Q. Now, was there anything on top of this lumber pile when you boarded her?

A. No.

Q. Not as you remember?

A. No, not as I remember. [318]

Q. About how long after you boarded the vessel was it until Doctor James came aboard?

A. Just a few minutes.

Q. Now, in descending to the deck, how did you descend,—you stepped to the lumber pile, I take it?

A. I stepped on the lumber pile.

Q. And then how did you proceed?

A. Then I took in the situation as it was, and I found the ends of the planks were all different lengths and formed steps down on the after-end of the pile, and in a few places, two or three places, there were door-

(Testimony of John R. Macaulay.)

mats laid to step on, so I took that way of getting down on to the main deck. I turned to the right and I stepped on these door mats until I eventually got on to the main deck, and then to the bridge. That is how I boarded the ship.

Q. The planks formed steps that you stepped on going down?

A. Yes, they formed natural steps.

Q. About how far from the point where the Jacob's ladder was fastened was it to the end of the lumber pile where the steps began downward? How far?

A. Well, to the best of my recollection it must have been eight or ten feet, I judge, somewhere around there.

Q. And when you left the ship again, how did you get up to the top of the lumber pile?

A. Well, I don't remember now how I did leave the ship, whether I went over the same way or whether I went ashore on the gangway. I suppose I did after it got docked, took the gangway.

Q. You remained on the vessel until after it docked?

A. I did, I docked the ship.

Q. How was this lumber pile arranged as to its surface, was it [319] level or not?

A. The surface was level.

Q. And the side of it inwards toward the deck, up and down, how was it?

A. It was almost perpendicular up and down.

Q. That morning when you boarded the vessel, and when Doctor James boarded the vessel, what was the

(Testimony of John R. Macaulay.)

condition of the weather?

A. The weather was good.

Q. Was it dark or daylight?

A. It was daylight.

Q. Clear? A. Beg pardon?

Q. Was it clear or muggy? A. Clear.

Q. Was the vessel lying still or quiet, or was it rolling?
A. She was lying still.

Q. When was your attention called to the fact that Doctor James had a fall?

A. Captain Thomson was the first to call my attention to the fact that Doctor James had injured himself on boarding the vessel.

Q. While you were there on the bridge?

A. Yes, sir.

Q. He called it to your attention that he had fallen?

A. Yes, sir.

Mr. OLSON.—I think that is all.

Cross-examination of JOHN R. MACAULAY.

Mr. CATHCART.—How old a man are you, Captain? [320]

A. I am 64 years of age; I was born on the 4th day of February, 1854.

Q. 4th day of February, 1854? A. Yes, sir.

Q. You are rather a tall man; how tall are you?

A. About five feet eleven, or thereabouts.

Q. How much do you weigh, what is your weight?

A. 212, about.

Q. How did you get over to the "Coolgardie" that day?

(Testimony of John R. Macaulay.)

A. I went over in a steam launch, or gasoline launch.

Q. Pilot's launch, eh? A. Yes, sir.

Q. And you don't remember whether it was morning or afternoon?

A. No, I don't remember what time of day it was.

Q. You remember, however, that the Jacob's ladder was on the port side of the vessel?

A. On the port side.

Q. Do you remember that, or do you say it was on the port side because that is the usual side for them to put the ladder on?

A. In this case I am positive it was on the port side.

Q. And was it forward, or midships, or aft?

A. It was forward of the midships.

Q. And you remember that, do you? A. I do.

Q. Your launch came alongside and you climbed up the Jacob's ladder? A. I did.

Q. And then you put one leg over the rail and stood up on the planks that were there, the dunnage planks, is that it?

A. I put one leg over the rail and followed it.

Q. And there was no mat there on the pile of lumber by the Jacob's ladder?

A. There were mats on the pile of lumber distributed to give [321] the best surface possible for any person going on board at that location.

Q. Well, was there a mat by the Jacob's ladder?

A. I forget.

Q. You would not say there was, and you would

(Testimony of John R. Macaulay.)

not say there was not?

A. I wouldn't say there was, and I wouldn't say there wasn't.

Q. All right. But when you got up on the Jacob's ladder you looked around and you took in the situation, you say? A. Exactly.

Q. And were the men then lined up on the main deck right opposite where the Jacob's ladder was?

A. There were a few men there.

Q. But the whole crew had not lined up yet?

A. No, there were some of them down in the engine-room handling the ship's engines at that time, distributed all over the ship.

Q. Did you know the quarantine officer or Government physician was following you?

A. I expect he was.

Q. You do not remember seeing his launch?

A. I did not see his launch, I did not see the doctor until he came on board—until after he came on board.

Q. Then from where you stood taking in the situation, do you want us to understand you could see the end of the lumber pile was uneven so as to form steps? A. Yes, sir.

Q. You could? A. I could.

Q. And you could see the mats there, could you?

A. I could. [322]

Q. Yes, and the mats,—how many mats would you say were on top of the pile of lumber, on the top? A. About three mats.

Q. About three mats? A. Yes, about three.

(Testimony of John R. Macaulay.)

Q. And then you walked towards the end where the timber was uneven so as to form steps?

A. Exactly.

Q. And was that end forward or aft?

A. It was aft.

Q. And when you got there were there mats on these projections of timber that formed the steps?

A. Yes, sir; that is where the mats were.

Q. Oh, that's where they were. A. Yes, sir.

Q. And not on top of the lumber?

A. No, on the natural steps formed by the ends of the planks.

Q. Was there one on the end of the pile of lumber at the top and then one on the lower piece of lumber?

A. Well, I can't remember that.

Q. But you know there were mats on some of these projections, anyway?

A. I am positive there were, because I stepped on them.

Q. And you stepped on these mats and then it was on these projecting ends of the timber or lumber from one to the other until you got to the main deck? A. Exactly, that is how I got down.

Q. And did you step on anything else but the ends of the lumber?

A. Well, I might have, I might have stepped on the bare lumber between those door mats, but that I don't remember.

Q. Yes, but anything else I mean except the lumber or the mat that covered the lumber?

A. No, I don't remember stepping on to anything

(Testimony of John R. Macaulay.)

else but from [323] that pile of lumber right down on these mats and on to the main deck.

Q. That's what I wanted to get, if you remember it.

A. I might have stepped on the bare lumber; I can't remember each step that I took.

Q. But it was either the bare lumber, or else it was the lumber covered by the mat?

A. Exactly.

Q. And when you got down to the main deck did you go right up on the bridge? A. Immediately.

Q. Yes, and when you got up on to the bridge, how long were you there before your attention was called by the captain to Doctor James' fall?

A. A few minutes.

Q. Now, after you got up on the bridge and before your attention was called to Doctor James' fall, did anybody that you saw remove those mats that you speak about?

A. At the time I arrived on the bridge of the steamer and shook hands with Captain Thomson, I passed the remark to him about his accommodation ladder over the side, and I also thanked him for placing those mats there on the ends of those planks that was on the main deck. Then Captain Thomson remarked that just previous to this accommodation for boarding the quartermaster had put the Jacob's ladder over on the side port further aft and alongside on the main deck there was a manhole leading into the coal bunker and there was a pretty dirty mess there with coal dust and one thing and another,

(Testimony of John R. Macaulay.)

engineer's bench and greasy vise, and Captain Thomson had ordered the ladder removed from this place to [324] forward of the upper structure of the bridge, and it was by his own orders that the ladder was put forward and the mats laid on the dunnage pile.

Q. I see; that is how you remembered that.

A. I remember Captain Thomson passing those remarks to me immediately upon getting on the bridge.

Q. And now having told us all of that, will you answer my question? A. Yes, sir.

Q. Whether or not those mats were removed between the time you passed over them and the time the doctor fell, as you heard, or as you said your attention was called.

A. I am not prepared to answer that question because after I passed over those mats it was a past memory as far as I was concerned.

Q. Now, was there anything unusual about boarding the ship there at the time that impressed itself on your memory so that you remembered all of these things?

A. The reason of my remembering these things so well is through the accident to Doctor James, otherwise it would have gone out of my memory a long time ago.

Q. It was not due to the fact that there was not the usual step there or steps opposite the Jacob's ladder leading down from the pile of lumber to the deck, that did not strike you as unusual?

(Testimony of John R. Macaulay.)

A. In boarding ships nowadays, to get an inside ladder from the rail to the main deck is something that we do not get very often. That is a thing of the past. There are no more stanchions or hand-rails or man-ropes and all this business; there is no more of that. They make fast a Jacob's ladder [325] to the rail and you get over that the best way you can, and if you are a good jumper you jump, and if you don't you get down as easy as you can, get hold of a piece of rope or a piece of rigging or something else; there are no more of these side ladders.

Q. Are you a good jumper?

A. Well, I used to be a pretty good jumper.

Q. Now? A. Well, I can jump fairly well yet.

Q. Did you see anything else at the end of the pile of lumber except the projecting boards and the mats?

A. No, I don't remember seeing anything else on the main deck but the upper structure of the vessel, of course.

Q. You saw nothing then to help you down or to step down on except the projecting boards which formed steps? A. That's about all.

Q. Nothing else?

A. Nothing else that I remember.

Q. If there was anything else would you remember one? A. No,—well, I might and I mightn't.

Q. You mightn't? A. I might not.

Q. Were they mats like this?

A. Something similar to that, that looks to me as if that was one of the mats.

(Testimony of John R. Macaulay.)

Q. How many would you say there were on that lumber pile? A. About three similar to that.

Q. Now, as I understand it, the ends of the timber would jut out something like that pencil there, one below the other, is that right?

A. Something similar to that. [326]

Q. Now, isn't it a fact that the ends of this lumber that stuck out there were very short and narrow and wouldn't hold a mat of that size?

A. Well, I don't see any reason why they wouldn't hold a mat, the fact is they were there.

Q. They were there?

A. They were there and I stepped on them.

Mr. CATHCART.—That's all.

Mr. OLSON.—That is all, Captain.

We rest, your Honor.

The COURT.—Gentlemen, do you wish to argue this this morning?

Mr. CATHCART.—No, your Honor, I do not.

The COURT.—Well, set your time for argument.

Mr. OLSON.—To-morrow morning?

Mr. CATHCART.—No, I would rather have it Friday morning.

Mr. OLSON.—All right; Friday morning at nine o'clock.

The COURT.—Very well, gentlemen, argument in this case will be heard on Friday morning, then.

There being no further testimony, the proceedings here ended. [327]

Honolulu, H. T., October 25, 1918.

I hereby certify that the foregoing transcript of testimony, consisting of two hundred and eighty (280) typewritten pages, is a full, true and accurate transcript of my shorthand notes of the testimony taken and the proceedings had upon the trial of the case of William F. James vs. The British Steamship "Coolgardie," etc., upon the dates and at the times in said transcript mentioned.

H. F. NIETERT,

Official Reporter, United States District Court.

[328]

In the United States District Court for the Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship "Coolgardie," etc., Libellee. Thompson & Cathcart, Proctors for Libellant. Robertson & Olson, Proctors for Libellee. Horace W. Vaughan, Judge. Opinion. Filed October 9th, 1918 at 11 o'clock and 20 Minutes A. M. (Sgd.) A. E. Harris, Clerk.

[329]

[Title of Court and Cause.]

THOMPSON & CATHCART, Proctors for
Libellant.

ROBERTSON & OLSON, Proctors for Libel-
lee.

HORACE W. VAUGHAN, Judge.

SYLLABUS.

NEGLIGENCE.—The crew of a vessel owe the duty to use ordinary care to have facilities and a way

to get aboard and on deck, that are reasonably safe, provided for the boarding officers, and a failure to perform this duty is negligence.

NEGLIGENCE.—Such provision for boarding officers to get on board as left it for them to get down to the deck any way they could from the top of a pile of lumber about three feet above it upon which they had to land from a Jacob's ladder up which they had to climb over the side of vessel, was negligence.

NEGLIGENCE.—Failure to provide something to use as steps for boarding officers to descend from lumber pile to deck, causing a boarding officer to jump down, whereby he was injured, is negligence causing injury rendering vessel liable. [330]

[Title of Court and Cause.]

Opinion.

Libellant was assistant surgeon in the public health service. The "Coolgardie" was lying outside the harbor seeking to enter. It was libellant's duty to go to where she lay and board her and examine her crew and ascertain whether she should be placed in quarantine or permitted to enter. In boarding her libellant fell upon her deck and suffered injury and has sued for damages.

The evidence shows that to board the vessel it was necessary to climb up a Jacob's ladder over the side, which, according to the evidence of the captain, was four feet and two inches above the deck, and get over the side on to a pile of lumber about a foot and a

half below, and then get down from the pile of lumber to the deck, about two feet and nine inches below, by jumping, stepping or sliding down, as might occur to the person boarding to be least likely to cause injury, or by going to the aft end of the pile of lumber, some few feet away from where the Jacob's ladder was, and stepping down on a bitt, an iron structure about nine inches in diameter across the [331] top, about a foot and a half above the deck, and from it to the lumber pile where it was lower and then to the deck, libellant climbed over the side of the vessel and got on the pile of lumber and jumped down to the deck from the top of the pile of lumber where he got off the Jacob's ladder. In jumping to the deck he fell upon his knees and suffered the injury.

It is insisted for libellant that the mat that was on the pile of lumber where it had been placed by some of the crew for the benefit of the boarding officers, on which libellant was standing when he jumped, slipped when he jumped and caused him to fall on his knees instead of lighting on his feet; and it is insisted for the vessel that the mat did not slip. It appears to me that this is an immaterial issue. Surely the vessel is not liable for the slipping of the mat, if it slipped. If nothing but the slipping of the mat, if it slipped, caused the injury, there is no liability. The liability of the vessel depends upon whether it used ordinary care to have a way to get aboard and on deck that was reasonably safe, provided for libellant to use, or follow in boarding. If it did it is not liable; if it did not and libellant's in-

jury was cause by its negligence in this particular, it is liable.

It is insisted on behalf of the vessel that libellant should have gone to the aft end of the pile of lumber and descended to the deck by stepping down on the bitts, and then down on the lumber and then to the deck, that this was the way provided by it to get from the lumber pile to the deck, and that libellant assumed the risk in failing to use the way provided by it, which was not attended with any danger, and in using the way which was not provided, which was attended with danger. [332]

I have carefully considered all the evidence and am of opinion that it does not support the contention that *via* the aft end of the lumber pile was the way to get from the lumber pile to the deck arranged or provided by the vessel. It is true that the testimony of one witness supports this view, but not a single member of the crew supports it. There is quite a disagreement in the testimony of the members of the crew as to how the aft end of the lumber pile was arranged. All of them said you could descend from the lumber pile to the deck that way, but not one said it was arranged for that purpose or that it was the way of getting to the deck that they expected the boarding officers to use. It occurs to me that if the aft end of the lumber pile route was the way the crew expected the boarding officers to take in getting from the lumber pile to the deck, or the way arranged or provided by the vessel for that purpose, some member of the crew should have known something of it. This way required or contemplated

stepping from the pile of lumber down on to the bitts or one of them and from them or it to the deck; in fact, the only thing that can be said in favor of it, if that was in its favor, is that *is* afforded the opportunity of using the bitts as steps. The bitts were about eight or nine inches in diameter across their tops and were of iron and were slightly oval. They were not made for steps nor intended for use as steps. The tops of them were a foot or more lower than the top of the lumber pile and were about a foot and a half above the deck. Would an ordinarily prudent person, exercising ordinary care and circumspection, situated as libellant was on the lumber pile and having to descend to the deck—supposing he knew the bitts were there and the whole situation as it was,—have thought it safer to go to the aft end of the pile of lumber and descend by using the bitts as steps, than to jump down to the deck. I have thought the matter over very [333] carefully and I do not believe he would. I believe such an ordinarily prudent person so situated and exercising ordinary care would have thought it safer to jump down two and a half or three feet to the deck than to use the bitts as steps under the circumstances.

I conclude from the evidence that no provision whatever was made for the boarding officers to get from the lumber pile to the deck, and that the vessel was guilty of negligence in failing to make such provision. I am of opinion that the exercise of ordinary care would have provided something for them to step down upon from the lumber pile where they got off the Jacob's ladder.

It is insisted that libellant was guilty of negligence in jumping off the lumber pile, that he should have stopped or squatted down and placed his hands on the lumber and got off. Of course it is easy to think of many ways libellant could have got off without suffering injury. But the question is: Would an ordinarily prudent person have thought it unsafe to jump? I think the question must be answered in the negative.

I find from the evidence that the carelessness of the vessel in failing to have a way to get from the lumber pile to the deck provided for the use of libellant, caused libellant to jump and that jumping down caused his injury, and that the vessel is liable in damages therefor. I assess the damages at Five Thousand (\$5,000) Dollars. I am therefore of opinion that libellant should recover judgment for that amount.

(Sgd.) HORACE W. VAUGHAN,
Judge U. S. District Court.

October 8th, 1918, Honolulu, T. H. [334]

In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship "Coolgardie" Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests

Therein, Libellee, and H. A. Thomson, Master and Claimant. Final Decree. Filed Nov. 1, 1918, at — o'clock and — minutes M. A. E. Harris, Clerk. (S.) Wm. L. Rosa, Deputy Clerk. Thompson & Cathcart, 2-12 Campbell Block, Honolulu, T. H., Proctors for Libellant. [335]

In the District Court of the United States, in and for the District and Territory of Hawaii.

IN ADMIRALTY—IN REM.

WILLIAM F. JAMES,

Libellant,

vs.

The British Steamship "COOLGARDIE" Whereof H. A. THOMSON is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein,
Libellee,

and

H. A. THOMSON,

Master and Claimant.

Final Decree.

This cause having come on before the Court for hearing and having been heard on the pleadings, and proofs having been made and argued and submitted by the respective parties and due deliberation having been had thereon, and the Court having filed its decision herein finding that libellant is entitled to re-

lief by way of damages in the sum of \$5,000;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libellant recover against the libellee, the sum of Five Thousand Dollars (\$5,000) as and for damages suffered by him caused by the negligence of libellee, together with costs of suit taxed in the sum of \$63.25.

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED THAT unless an appeal be taken from this decree within the time [336] limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of the said steamship "Coolgardie," her tackle, apparel, furniture, boats and appurtenances, and against all persons having or claiming to have any interest therein and against all persons lawfully intervening in their interests therein, do cause the engagements of their said stipulations to be performed, or show cause, within four days after the expiration of said time of appeal or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy this decree.

Done in open court this 1st day of November, A. D. 1918.

(S.) HORACE W. VAUGHAN,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

Approved as to form:

_____,
Proctors for Claimant and Libelee.

Due service, by copy, of the within final decree is hereby admitted.

Attorneys for Libellee.

Honolulu, Hawaii, Oct. 30th, 1918.

I hereby certify that I personally served upon Robertson & Olson, proctors for the British Steamship "Coolgardie" and H. A. Thomson, Master and Claimant, a true copy of the within final decree this 30th day of October, A. D. 1918, at 2 o'clock P. M.

(S.) C. B. DWIGHT. [337]

In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs. The British Steamship "Coolgardie" Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee, and H. A. Thomson, Master and Claimant. Notice of Appeal. Filed Nov. 9, 1918, at — o'clock and — minutes — M. A. E. Harris, Clerk. (Sgd.) Wm. L. Rosa, Deputy Clerk. Robertson & Olson, 863 Kaahumanu St., Honolulu, T. H., Attorneys for Libellee and Claimant. [338]

[Title of Court and Cause.]

Notice of Appeal.

To WILLIAM F. JAMES, Libellant in the Above-entitled Cause, and to Messrs. THOMPSON & CATHCART, His Proctors:

You and each of you are hereby notified that the British steamship "Coolgardie," and H. A. Thomson, master and claimant, respondents in the above-entitled cause, intend to and hereby do appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and decree of the District Court of the United States in and for the District and Territory of Hawaii, made and entered in the above-entitled cause [339] on the 1st day of November, 1918, and you are further notified that said respondents intend to introduce new proofs in said appeal.

Honolulu, Hawaii, November 9th, 1918.

ROBERTSON & OLSON,
Proctors for the British Steamship "Coolgardie,"
Libellee, and H. A. Thomson, Master and Claimant, said Respondents.

Received a copy of the foregoing this 9th day of November, 1918.

THOMPSON & CATHCART,
Proctors for William F. James, Libellant. [340]

In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty—In Rem. William F. James, Libellant, vs.

The British Steamship "Coolgardie" Whereof H. A. Thomson is and was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein, Libellee, and H. A. Thomson, Master and Claimant. Assignment of Errors. Filed Nov. 15, 1918, at 11 o'clock and 30 minutes A. M. A. E. Harris, Clerk. ————, Deputy Clerk. Robertson & Olson, 863 Kaahumanu Street, Proctors for Appellants. [354]

[Title of Court and Cause.]

Assignment of Errors.

Now comes the British steamship "Coolgardie," libellee, and H. A. Thomson, master and claimant, appellants in the above-entitled cause, and say that in the record, opinion, decision, decree and proceedings in the above-entitled matter in the above-entitled court, there is manifest and material error, and said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

1.

That the decree for \$5,063.25 (\$5,000 for damages and \$63.25 for costs) in favor of the libellant was and is not warranted by the evidence and was and is erroneous, [355]

2.

That the Court erred in holding and deciding that the libellee was negligent in failing to have a way to

get from the lumber pile to the deck provided for the use of the libellant, and thereby caused the libellant to jump and caused the libellant's injury.

3.

That the Court erred in holding and deciding that the libellee failed to use ordinary care to have a way to get aboard and on deck that was reasonably safe, provided for the libellant to use, or follow in boarding.

4.

That the Court erred in holding and deciding that no provision whatever was made for the boarding officers to get from the lumber pile to the deck, and that the libellee was negligent in failing to make such provision.

5.

That the Court erred in holding and deciding that the exercise of ordinary care would have provided something for the boarding officers to step down upon from the lumber pile where they got off the Jacob's ladder.

6.

That the Court erred in holding and deciding that the libellee failed to provide a reasonably safe means of access by the libellant to the vessel.

7.

That the Court erred in holding and deciding that the libellant was not negligent. [356]

8.

That the Court erred in holding and deciding that the libellant did not assume the risks of boarding the vessel in the way and manner that he did board the same.

9.

That the Court erred in holding and deciding that negligence of the libellee was the cause of the libellant's injury.

10.

That the Court erred in not holding and deciding that the libellee was not negligent.

11.

That the Court erred in not holding and deciding that the libellant's negligence was the cause of his injury.

12.

That the Court erred in not holding and deciding that the libellant assumed all of the risks of jumping to the deck of the vessel, and that therefore the libellee was not liable for the libellant's injury.

13.

That the Court erred in not holding and deciding that a reasonably safe way of access to the deck of the vessel from the lumber pile was provided at the end of the lumber pile.

14.

That the Court erred in not holding and deciding that a reasonably safe way of access to the deck from the lumber pile at the end of the lumber pile was provided, that the same was open to the view of the libellant in boarding the [357] vessel, and that by choosing to descend to the deck by jumping thereto from the lumber pile directly in front of the Jacob's ladder, the act of the libellant was the cause of the injury, and therefore the libellee was not liable for the injury.

15.

That the Court erred in not holding and deciding that the libellant's negligence at least contributed to his injury, and therefore the damages should at least have been divided.

16.

That the Court erred in not holding and deciding that the libellant's injury was due to a pure accident, and therefore the libellee was not liable.

17.

That there was and is no evidence in the record upon which to assess the damages at \$5,000.

18.

That the Court erred in making, rendering and entering a final decree in favor of the libellant.

19.

That the Court erred in not making, rendering and entering a final decree in favor of the libellee and claimant and for their costs against the libellant.

In order that the foregoing assignment of errors may be and appear of record, said appellants herein file and present the same to said Court, and pray such disposition to be made thereof as is in accordance with law and the [358] statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District Court of the United States in and for the District and Territory of Hawaii.

Dated, Honolulu, T. H., November 15th, 1918.

The British Steamship "COOLGARDIE,"
and H. A. THOMSON, Master and
Claimant,

Appellants,
By ROBERTSON & OLSON,
Their Proctors.

Due service of a copy of the within and foregoing
assignment of errors this day is admitted.

Dated, Honolulu, T. H., November 15th, 1918.

THOMPSON & CATHCART,
C. H.

Proctors for William F. James, Libellant. [359]

In the District Court of the United States in and
for the District and Territory of Hawaii. In Ad-
miralty—In Rem. William F. James, Libellant, vs.
The British Steamship "Coolgardie," Whereof
H. A. Thomson is and was Lately Master and Cap-
tain, Her Tackle, Apparel, Furniture, Boats and
Appurtenances, and Against All Persons Having or
Claiming to Have Any Interest Therein and Against
All Persons Lawfully Intervening in Their In-
terests Therein, Libellee, and H. A. Thomson, Mas-
ter and Claimant. Praeceptum for Transcript on Ap-
peal. Filed Nov. 15, 1918, at — o'clock and —
Minutes — M. A. E. Harris, Clerk. Wm. L.
Rosa, Deputy Clerk. Robertson & Olson, 863
Kaahumanu St., Proctors for Appellants. [366]

[Title of Court and Cause.]

Praeceptum for Transcript on Appeal.

To the Clerk of the District Court of the United States in and for the District and Territory of Hawaii:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal and assignment of errors heretofore taken, sued out and perfected to said Court, and include in said transcript the following pleadings, proceedings, opinions, decrees and papers on file in said cause, [367] to wit:

1. Libel.
2. Monition.
3. Appearance for claimant.
4. Claim of claimant.
5. Stipulation for release.
6. Stipulation entered into pursuant to rules and practice of court.
7. Answer of claimant.
8. Stipulation for further hearing of cause before the Honorable Horace W. Vaughan, Judge of court, and order pursuant to said stipulation.
9. Transcript of testimony.
10. All exhibits.
11. Opinion and decision.
12. Decree.
13. Notice of appeal.

14. Stipulation for cost and supersedeas bond on appeal.
15. Bond on appeal for costs and staying execution.
16. Notice of filing said bond on appeal.
17. Assignment of errors.
18. Affidavit relative to filing assignment of errors.
19. Citation.
20. Praeceptum for transcript on appeal.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, [368] and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, in the State of California, before December 16, 1918.

Dated Honolulu, T. H., November 15th, 1918.

ROBERTSON & OLSON,

Proctors for the British Steamship "Coolgardie,"
 Libellee, and H. A. Thomson, Master and Claimant,

Appellants.

Service of a copy of the foregoing praecipe is hereby acknowledged.

Honolulu, T. H., November 15th, 1918.

THOMPSON & CATHCART,

Proctors for William F. James, Libellant and Appellee. [369]

[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Hawaii,—ss.

I, A. E. Harris, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 370, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation, assignment of errors and two (2) orders of enlargement of time for filing apostles on appeal, and exhibits.

I further certify that the cost of the foregoing transcript of record is \$19.95, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 18th day of January, A. D. 1919.

[Seal]

A. E. HARRIS,

Clerk U. S. District Court, Territory of Hawaii.

[370]

[Endorsed]: No. 3294. United States Circuit Court of Appeals for the Ninth Circuit. The British Steamship "Coolgardie," Libellee, and H. A. Thomson, Master and Claimant, Appellants, vs.

William F. James, Appellee. Apostles on Appeal.
Upon Appeal from the United States District Court
for the District and Territory of Hawaii.

Filed January 30, 1919.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 3294.

The British Steamship "COOLGARDIE" and H. A.
THOMSON, Master and Claimant,
Appellants,

vs.

WILLIAM F. JAMES,

Appellee.

**Notice of Filing Apostles and Designation of Parts
of Record to be Printed.**

To William F. James, Appellee Herein, and Messrs.
Thompson & Cathcart, His Proctors:

Please take notice that the apostles on appeal in
the above cause were filed in the above-entitled
cause on the 30th day of January, 1919.

You are further notified that appellants intend
to reply upon all of the assignments of error in said
record and consider all of the record necessary for
the consideration of their said assignments of error

with the exception of the following, which appellants do not consider necessary to be printed in said record and desire to have omitted from said record as printed:

1. Claim of H. A. Thomson, pp. 22 to 24, inclusive.
2. Stipulation on release of vessel, pp. 25 to 27, inclusive.
3. Libelant's stipulation for costs, pp. 29 to 30, inclusive.
4. Stipulation re reduction of release bond, pp. 341 to 343, inclusive.
5. Stipulation re release bond standing as bond on appeal, pp. 344 to 346, inclusive.
6. Bond on appeal, pp. 347 to 350, inclusive.
7. Notice of filing bond on appeal, pp. 351 to 353, inclusive.
8. Affidavit relative to filing assignment of errors, pp. 361 to 362, inclusive.
9. Citation, pp. 363 to 365, inclusive.
10. Title of Court and Cause except on first page and on libel, inserting instead "Title of Court and Cause."

Dated February 3d, 1919.

A. G. M. ROBERTSON,

C. H. OLSON,

S. H. DERBY,

Proctors for Appellants.

Receipt of a copy of the within notice and designation is hereby admitted this 3d day of February, 1919.

THOMPSON & CATHCART and
FREDERICK MILVERTON,

Proctors for Appellee.

[Endorsed]: No. 3294. In the United States Circuit Court of Appeals for the Ninth Circuit. The British Steamship "Coolgardie" et al., Appellants, vs. William F. James, Appellee. Notice of Filing Apostles and Designation of Parts of Record to be Printed. Filed Feb. 3, 1919. F. D. Monckton, Clerk.